

DEBTORS' EXHIBIT 1

	Wind Down Budget As of 12/21	Downside Wind Down Budget As of 12/21	APA Schedule
<u>GOB Sale Proceeds</u>			
Inventory ¹	501,197	501,197	
GOLV	125.0%	120.0%	
Net Proceeds	\$ 626,497	\$ 601,437	
Ending Cash Balance (12/21/24)	15,198	15,198	
<u>Inflows</u>			
GOB Retail Proceeds	626,497	601,437	
Net Proceeds - Ongoing GOB Waves	9,419	9,419	
Net Proceeds - In Transit Inventory	18,667	18,667	
Lease Sale Proceeds	40,250	40,250	
Sales Tax Proceeds	40,584	39,030	
Building Sale Proceeds	34,500	34,500	24,500
Outstanding Credit Card Receivables	7,109	7,109	
FF&E/M&E Receipts	7,345	7,345	
Real Property Sale Proceeds	9,494	9,494	
Intellectual Property Sale Proceeds	6,500	6,500	
Worldpay Reserve	6,000	6,000	
Outstanding Litigation	5,000	5,000	3,000
Sublease Receipts	1,200	1,200	
APA Admin Budget			42,391
APA Wind Down Budget			125,000
State Income Tax Refund	6,000	6,000	6,000
Variety Severance Mitigation			5,712
Stub Rent			17,000
Pro Fee Escrow			7,500
Other Proceeds	818,566	791,952	231,103
Total Inflows and Opening Cash	\$ 833,763	\$ 807,150	\$ 231,103
<u>Outflows</u>			
<i>Payroll</i>			
HQ	8,457	8,457	4,240
HQ Severance	6,600	6,600	6,600
DCs	11,917	11,917	9,534
Stores	89,345	89,345	
Store Severance	28,559	28,559	28,559
<i>Rent and Occupancy Costs</i>			
DC & Store Rent	64,050	64,050	
Stub Rent	17,000	17,000	17,000
IT Disbursements	8,859	8,859	3,813
Outbound Freight Disbursements	8,871	8,871	2,773
Utilities Disbursements	19,840	19,840	17,142
Store Operating Expense Disbursements	13,434	13,434	—
Insurance Disbursements	4,900	4,900	2,400
401(k) Employee Contributions	1,800	1,800	1,800
Credit Card Fees	8,017	8,017	
Bank Fees	461	461	
Other Expenses	3,788	3,788	2,488
Less: Winddown Expenses	\$ 295,898	\$ 295,898	\$ 96,349
VARIABLE OPERATING EXPENSES			
HQ Severance	3,493	3,493	3,493
DC Severance	4,767	4,767	4,767
PTO	5,895	5,895	5,895
401(k) Match	2,695	2,695	2,695
Q3 Bonus	2,799	2,799	2,799
Q4 Bonus	3,500	3,500	3,500
IBNR	11,730	11,730	10,000
Corporate Winddown	—	—	5,828
Worker's Comp Disbursements	2,173	2,173	1,778
Benefits Disbursements	8,050	8,050	6,037
Sales Tax Payable	53,759	53,759	25,000
Other Tax Payable	30,528	30,528	27,793
Less: Total of Expenses to be Discussed	\$ 129,389	\$ 129,389	\$ 99,586
<i>Other Costs</i>			
Professional Fees	28,858	28,858	13,838
Liquidator Fees	45,522	45,522	
UST Fee	2,000	2,000	2,000
Interest	6,143	6,143	
Less: Other Costs	\$ 82,522	\$ 82,522	\$ 15,838
Net Cash Available for Distribution	\$ 325,954	\$ 299,340	\$ 19,330
<u>DIP ABL, DIP FILO and LC Claims</u>			
DIP ABL (as of 12/21/24)	120,749	120,749	
DIP FILO (as of 12/21/24)	134,245	134,245	
Cash Collateralization of LCs (as of 12/21/24)	60,151	60,151	
Total DIP ABL, DIP FILO and LC Claims	\$ 315,146	\$ 315,146	
Net Cash Available for Administrative Claims	\$ 10,808	\$ (15,805)	

META PLATFORM'S EXHIBIT 1

1 IN THE UNITED STATES BANKRUPTCY COURT
2 FOR THE DISTRICT OF DELAWARE
3 Chapter 11
4 Case No. 24-11967 (JKS)

5 - - - - -x
6 IN RE: BIG LOTS, INC., et al,
7 Debtors.
8 - - - - -x

9 REMOTE DEPOSITION OF:
10 KENT PERCY
11 December 30, 2024
12 7:00 p.m. ET

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24 Reported by: Karen Friedlander, CCR-NJ, NYRCR,
RDR, CRR
25 Job No.: 8484

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1	I N D E X	
2	Examinations	Page
3		
4	KENT PERCY	6
5	BY MS. MASHBURN-MYRICK:	8
6	BY MS. ROGERS:	37
7	BY MR. ANGELICH:	72
8	BY MR. PARROTT:	95
9	BY MS. CASEY:	97
10	BY MR. CONLAN:	115
11	BY MS. KATONA:	117
12	BY MS. HUMISTON	119
13		
14		

15 E X H I B I T S

16 No. Description Page

17

18 - No exhibits marked -

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6

1 (KENT PERCY, having been duly

2 sworn as a witness, testified as follows:)

3 MR. McCLAMMY: Before we start,

4 this is Jim McClammy from Davis Polk on behalf

5 of the debtors and the witness, just for the

6 record. In the room with Mr. Percy is also Adam

7 Shpeen, S-H-P-E-E-N. There's no one else in the

8 room with us.

9 (Audio distortion.)

10 MR. McCLAMMY: I was saying --

11 all right. I was just saying, for the record,

12 in the room with the witness, in addition to

13 myself, is Adam Shpeen, also with Davis Polk.

14 Last name is S-H-P-E-E-N.

15 And then prior to the deposition

16 starting, I was asked if I might be able to

17 provide the witness with a copy of his

18 declaration, the Exhibit F and G to the sale

19 motion, and the 12-26-24 notice of filing of

20 budget, that were referenced in some of the

21 emails earlier.

22 I do have completely clean copies

23 here with me in the room. I can represent that

24 they are completely clean copies and they are

25 the as-filed versions that have the docket

7

1 numbers requested on them from the ECF filing.

2 Unless anyone has any objection,

3 I'm happy to have these placed in front of the

4 witness to make it a little bit easier for him

5 to see those documents, as we go forward this

6 evening.

7 MS. ROGERS: We're going to put

8 it on the screen, too. We can't see the witness

9 or anybody, currently.

10 MR. AZMAN: Yeah. It's Darren, I

11 think that you'll need to pin the Zoom link that
12 you have open there. Somehow, whoever is
13 hosting, will have to post that because
14 otherwise it won't pick up the audio since you
15 are using the cell phone.

16 MR. McCLAMMY: So I can see us on
17 the screen, so I think that's right. So I think
18 if you, if you pin the box for Morris Nichols,
19 where the witness and I are.

20 MS. ROGERS: Okay. I see you
21 now.

22 MR. McCLAMMY: Okay. With that,
23 we're ready to proceed.

24 MS. MASHBURN-MYRICK: Well, this
25 is Danielle Mashburn-Myrick. D-A-N-I-E-L-L-E,

8

1 M-A-S-H-B-U-R-N, hyphen, Myrick, M-Y-R-I-C-K.

2 I represent Peak Living, Delta
3 Furniture Manufacturing, Infinite Furniture
4 Supply and Hello Sofa in these cases.

5 All four of our clients are
6 postpetition administrative plaintiffs, and if
7 others are -- if it's acceptable to others, I
8 would like to ask some questions.

9 EXAMINATION

10 BY MS. MASHBURN-MYRICK:

11 Q. Okay. Mr. Percy, I've reviewed
12 your declaration and my questions generally
13 pertain to your declaration statements made
14 there. You might find it helpful to have that
15 in front of you.

16 I'm going to ask my colleague,
17 Jorge Garcia, to put your declaration on the
18 screen, too, so that others who are
19 participating can view it.

20 MR. GARCIA: Is my screen
21 sharing, can everybody see it?

22 MS. MASHBURN-MYRICK: I'm able to
23 see it.

24 BY MS. MASHBURN-MYRICK:

25 Q. So, Mr. Percy, would you state

9

1 your name for the record?

2 A. Kent Percy.

3 Q. Okay. And, Mr. Percy, can you
4 tell us generally what your role has been in the
5 case's prepetition during the case and then now?

6 A. We were retained by Big Lots to

7 help -- prior to the Chapter 11 process, we were
8 originally brought in to help with cash flow
9 forecasting and then we migrated to the
10 preparation for Chapter 11, including the
11 first-day motions, and we have been advising the
12 company as a financial advisor through today.

13 Q. Thank you.

14 Did the debtors, and I'm thinking
15 now early in the case, from the petition date,
16 those first couple weeks, did the debtors
17 perform administrative solvency analyses during
18 that time?

19 MS. ROGERS: Danielle, was the
20 witness sworn?

21 MS. MASHBURN-MYRICK: I thought
22 so.

23 MS. ROGERS: I don't think so.

24 THE REPORTER: Yes, the witness
25 was sworn.

10

1 MR. McCLAMMY: The court reporter
2 can confirm.

3 (Off the record.)

4 BY MS. MASHBURN-MYRICK:

5 Q. Mr. Percy, early in cases, from
6 the petition date and those first couple weeks,
7 did the debtor perform administrative solvency
8 analyses?

9 A. We did not.

10 Q. When did the debtor first perform
11 an administrative solvency analysis?

12 A. We had not done an administrative
13 solvency analysis.

14 Q. Why not?

15 A. We were operating under a
16 stalking horse purchase agreement. We were
17 continuing to pay our obligations in full, for
18 all postpetition activities, and we were
19 pursuing a transaction with Nexus as the outcome
20 there, and we did not deem it necessary.

21 Q. I see.

22 About the sale to Nexus, were you
23 and your team responsible for conducting
24 diligence from the seller side on that
25 transaction prepetition?

11

1 A. We assisted with a significant
2 amount of due diligence, yes.

3 Q. Okay. And what did the debtors
4 do to satisfy themselves that Nexus had the
5 financial wherewithal to close the sale of this
6 proposed?

7 A. Nexus is a buyer that has a
8 private equity fund that has participated in
9 many acquisitions.

10 The investment bank that was
11 retained by the debtor is thoroughly --
12 thoroughly vetted them and did their own
13 analysis to their financial wherewithal.

14 Q. Okay. And what were the results
15 of that?

16 A. That they had sufficient capital
17 and were in the process of securing capital to
18 close the transaction and they were comfortable
19 that they had the financial wherewithal to
20 proceed and complete the sale.

21 Q. Thank you.

22 From your declaration, I
23 understand that the Nexus APA had, in section
24 9.06, a minimum asset value condition to
25 closing.

1 Are you familiar with that?

2 A. I am.

3 Q. Okay. And did the debtors
4 analyze whether that condition could be met
5 before the petition was filed?

6 A. We did.

7 Q. And what was the --

8 A. And it was -- it was our opinion
9 that based upon the inventory and assets that
10 were needed to run the business and a buildup of
11 inventory on a postpetition basis, that the
12 company could be in position to satisfy the
13 minimum assets test.

14 Q. What changed?

15 A. The debtor was not able to get
16 inventory in certain categories, most notably
17 consumables, which would be things like food,
18 paper plates, groc- -- garbage bags, things that
19 turn over relatively quickly, they were not able
20 to get terms with those vendors so they were not
21 able to get the level of inventory that was
22 necessary.

23 We discussed this with Nexus and
24 the determination was made that we were not
25 going to just buy alternative inventory to meet

1 the numerical test. That we informed Nexus that
2 the inventory levels were not going to meet the
3 tests, and they were comfortable with that,
4 however, they determined that they were not
5 going to change the level of detached or the
6 covenants.

7 Q. Tell us about the efforts the
8 debtors made to secure the inventory you're
9 telling us the debtors ultimately were unable to
10 secure?

11 A. There were significant
12 negotiations with vendors to procure this type
13 of inventory. A certain level of the inventory
14 was achieved, however, it was not in full
15 satisfaction of the level of fulfilment that the
16 stores would have preferred, and so there was a
17 deficiency in the total inventory and a fully
18 and stocked store and distribution centers.

19 Q. How many vendors were you unable
20 to reach terms with? What's the universe of
21 people you're talking about that the debtor was
22 unable to buy product from?

23 A. It's probably in excess of a

24 hundred.

25 Q. Did you reach out to any of those

14

1 vendors prepetition to talk to them about the
2 debtors' plans and the sale transaction that
3 might be proposed to secure some of that
4 cooperation before launching into this case?

5 A. No. We did not have any
6 conversations with our vendors about our plans
7 to file for bankruptcy prior to the Chapter 11
8 file.

9 Q. So did -- so the debtors, the
10 stalking horse bid, as I understand you to be
11 saying, was premised on the idea that these
12 vendors would continue doing business with the
13 debtor postpetition, and that premise turned out
14 to be faulty. Is that correct?

15 A. These vendors did continue to do
16 business, however, they did not provide terms.
17 So we were not able to procure as much inventory
18 as we wanted to based upon the liquidity
19 position of the debtor.

20 Q. Okay. Okay. So let me restate
21 that then.

22 The stalking horse agreement and
23 the cases generally were premised on the idea
24 that the debtor would be able to reach specific
25 terms with vendors that it hadn't prenegotiated

15

1 or arranged; is that correct?

2 A. That is correct.

3 Q. Okay. And what did the debtor
4 base its confidence that it would be able to
5 reach terms with those hundred-plus vendors that
6 would be satisfactory to the debtor and allow
7 the debtor to meet the minimum asset covenant in
8 the stalking horse agreement?

9 A. The level of terms was actually
10 relatively low, however, most of the vendors
11 required cash in advance. So instead of being
12 able to get even two week or four-week terms,
13 which were relatively modest, most of these
14 vendors required cash in advance for this
15 inventory.

16 So it was a significant
17 difference even just based upon a couple of the
18 weeks.

19 Q. How early in the cases did the

20 debtor know that it was not getting the terms it
21 needed from a significant number of its vendors
22 in order to meet the minimum asset covenant in
23 the sales agreement?

24 A. I mean, probably, I would say,
25 about a month in, we became aware that there was

16

1 a significant hill to climb to achieve this
2 level of inventory.

3 Q. Thank you.

4 How much inventory did the
5 debtors order from other vendors who were
6 selling to the debtors after it knew it wasn't
7 getting the terms it needed from a significant
8 number of vendors in order to meet the minimum
9 asset required and close the sale?

10 A. I don't recall the exact dollar
11 figure, but I will tell you that we did not
12 order excess inventory from vendors just to fill
13 the numerical.

14 We ordered the level of inventory
15 by category that we felt was in alignment with
16 what these stores would sell.

17 So we didn't, for instance, buy

18 twice as much furniture as we needed because we
19 could get terms with our furniture vendors. We
20 bought the applicable amount of furniture and
21 were deficient in areas such as consumables.

22 Q. Thank you.

23 In your declaration, I believe,
24 at paragraph 10, you mentioned that that Nexus
25 informed the debtors on December 1st that it was

17

1 going to require additional time to close the
2 transaction.

3 Were you familiar with those
4 statements that you made?

5 A. Yes.

6 MR. McCLAMMY: Actually, hold on,
7 before we -- before you answer, I think someone
8 on the line are experiencing feedback. I don't
9 know if everybody has their computers on and
10 their phones on mute, but if you're -- if you're
11 not actively speaking, if you could be on mute,
12 please.

13 MS. MASHBURN-MYRICK: Thank you
14 for that.

15 BY MS. MASHBURN-MYRICK:

16 Q. Going back to the December 1st
17 date in paragraph 10 of your declaration, after
18 the debtors received notice that Nexus was
19 wanting to push the closing date back, did the
20 debtors continue ordering product from vendors
21 who were selling to it?

22 A. We were anticipating that the
23 closing, which was originally anticipated for
24 December 2nd or 3rd, was going to close on
25 November -- I'm sorry, December 9th or 10th. So

18

1 we were interested in only a one-week delay. So
2 we continued business as usual.

3 Q. And then you go on to say that on
4 December 5th, you received the letter from Nexus
5 saying that the debtors minimum asset value
6 closing condition was not going to be satisfied.
7 And that they were exploring other paths but at
8 that point you had significant -- they had
9 significant capital needs and were indicating
10 that the sale was not likely to close.

11 Is that correct?

12 A. That is not my interpretation.
13 My interpretation is that they felt like between

14 our -- between the debtors identification of
15 additional savings, and the discussion with
16 other --

17 (Interruption.)

18 (Court reporter seeks
19 clarification.)

20 THE WITNESS: I'm sorry, can you
21 repeat the question again? I'm sorry.

22 MS. MASHBURN-MYRICK: Yes. All
23 right. Let me also point out, there's a phone
24 number (302)351-9577, is that the conference
25 room number?

19

1 MR. SHPEEN: Yes.

2 MS. MASHBURN-MYRICK: Okay.

3 A VOICE: (978) 273-5662 also in
4 that conference room? Because it seems to be
5 connected to that feedback loop, that phone
6 number.

7 (Discussion off the record.)

8 BY MS. MASHBURN-MYRICK:

9 Q. Sorry. Mr. Percy, going back to
10 paragraph 10 of your declaration, I understand
11 you to be saying that in the December 5th letter

12 sent by Nexus to the debtor, that Nexus
13 expressed to the debtor that they were still
14 put, "exploring whether there is a path to
15 close," and they you cautioned that there was
16 now significant capital need.

17 So at this point, on
18 December 5th, the debtor was aware that the
19 transaction with Nexus was in serious doubt,
20 correct?

21 A. It was in doubt. I don't know
22 that I would use the word "serious."

23 Q. Okay. Did the debtors continue
24 ordering the product after receiving this
25 December 5th letter?

20

1 A. We did.

2 Q. And in dollar figures, how
3 many -- how much product was ordered after the
4 December 5th letter was received?

5 A. I don't have that information
6 available.

7 Q. Thank you.

8 Upon receipt of the December 5th
9 letter, did the debtors conduct a solvency -- an

10 administrative solvency analysis at that point?

11 A. We did not.

12 Q. Why not?

13 A. We anticipated that the
14 transaction was still going to close. We were
15 -- we were proceeding with the request that
16 Nexus had in the December 5th letter, which was
17 to identify additional savings.

18 We also worked with their
19 prospective lenders, as well as other parties
20 that were looking to provide additional
21 liquidity to close the transaction and still
22 anticipated that the transaction would close.

23 (Court reporter seeks
24 clarification.)

25 THE WITNESS: And still

21

1 anticipated that the transaction would close.

2 (Interruption.)

3 MR. McCLAMMY: Listen, I
4 understand that we are on Zoom and we are doing
5 this all remotely, but people have to know that
6 your chat can be seen by everyone and it is not
7 a private conversation. It's inappropriate for

8 those kinds of things to be happening during the
9 course of this deposition. I don't understand
10 why that's happening.

11 I think most people here know
12 what deposition protocol is and it's no
13 different because this is happening over Zoom
14 than if we were all in person. You wouldn't be
15 saying these things aloud on the record.

16 But to the extent that these
17 things are in the chat, I would ask that the
18 court reporter make the chat part of the public
19 record, and that everyone who has put these
20 things in has their name attached to the
21 statements that are being made in the chat room
22 during this deposition, as if they were being
23 said aloud in the deposition room.

24 I'm sorry for the interruption.
25 If you wouldn't mind either asking again or

22

1 asking the court reporter to restate your
2 question.

3 MS. MASHBURN-MYRICK: Yes,
4 actually, could you read back where we were.

5 (Pertinent portion of the record

6 is read back.)

7 BY MS. MASHBURN-MYRICK:

8 Q. Okay. Does the estate have
9 claims against Nexus for the failure of Nexus to
10 close the sale?

11 A. I have not been party to those
12 conversations. I'm not sure.

13 Q. How were potential estate claims
14 against Nexus being handled pursuant to the
15 sale?

16 A. I do not -- I'm not aware of any
17 claims against Nexus that are being pursued at
18 this point pursuant to the sale.

19 Q. So the -- any potential claims
20 against Nexus are not part of the consideration
21 being paid in connection with the proposed sale
22 to Gordon Brothers; is that correct?

23 MR. McCLAMMY: Objection to form.

24 BY MS. MASHBURN-MYRICK:

25 Q. Did you understand the question?

23

1 MR. McCLAMMY: You can answer to
2 the extent that you know.

3 THE WITNESS: Not to my

4 knowledge.

5 BY MS. MASHBURN-MYRICK:

6 Q. Okay. In paragraph 16, of your
7 deposition -- or apologies -- in paragraph 16 of
8 your declaration, you say that Gordon Brothers
9 did provide, quote, provides, greater certainty
10 with respect to the debtors' ability to satisfy
11 administrative and other go-forward freight
12 expense in the Chapter 11 cases.

13 What exactly does that mean?

14 A. So GBRP as part of this
15 transaction is paying a specific amount and has
16 specific consideration, including in the asset
17 purchase agreement.

18 The assets that are identified
19 and that are a part of the estate have some
20 variability in their recovery. Most notably,
21 the inventory.

22 So the inventory is now being
23 sold in January post the holiday season. There
24 are multiple store -- other retailers that are
25 liquidating at this time and there is, for lack

24

1 of a better word, not as much confidence in

2 achieving a recovery on this inventory at the
3 level that would have been achieved in November
4 and December when people were buying for the
5 holiday season.

6 Q. Thank you.

7 Does the debtor have -- sorry.

8 MS. ROGERS: What month did you
9 say the inventory will now be sold?

10 MR. McCLAMMY: I'm sorry, I don't
11 know, I don't know who that was, but there's
12 really only one questioner at a time. So if you
13 are going to ask additional questions, that's
14 great, but otherwise --

15 MS. ROGERS: We're taking a
16 deposition with little notice. I think we can
17 have some leeway here.

18 Are you instructing the witness
19 not to answer the question?

20 MR. McCLAMMY: I'm not
21 instructing the witness not to answer a question
22 that's coming from a questioner.

23 MS. ROGERS: This is Beth Rogers
24 for Simmons Bedding. I did not get what month
25 he said. He said two different months. It was

1 confusing. I'm asking for clarity.

2 MR. McCLAMMY: Okay. To the
3 extent that we can do that this time, that's
4 great, but there's over 40 folks on the Zoom and
5 it would be unworkable to have people
6 interjecting throughout other people's
7 questioning and it's going to interrupt the flow
8 of the questioner.

9 But, Mr. Percy, to the extent you
10 remember, can you restate those months or do we
11 need to have the court reporter read the answer
12 back?

13 THE WITNESS: No, I can restate
14 it.

15 The recovery that was achieved in
16 November and December would have been higher
17 than what is being achieved and what we're
18 anticipating to be achieved in January or to go
19 forward liquidation of the stores.

20 Because it is the holiday season,
21 people are out buying, people are out looking
22 for more product, gifts, et cetera, and there
23 are more purchases in the November/December time
24 period for this retailer.

25 BY MS. MASHBURN-MYRICK:

26

1 Q. Mr. Percy, I understand that Big
2 Lots is deliberate in how it receives inventory
3 it has ordered, and over the last two months,
4 Big Lots has allowed inventory to sit on trucks
5 until it was ready to receive that inventory and
6 trigger the timeline for paying for that
7 inventory.

8 Can you testify that Big Lots has
9 actually received all of the inventory shipped
10 to it by my clients, Peak Living, Delta
11 Furniture Manufacturing, Independent Furniture
12 Supply, and Hello Sofa, and that the debtors
13 actually have title to all of that inventory
14 now?

15 MR. McCLAMMY: Objection to form.

16 THE WITNESS: I am not aware,
17 specifically, of the disposition or the receipt
18 for those specific vendors that you discussed.

19 BY MS. MASHBURN-MYRICK:

20 Q. Thank you. Going back to
21 paragraph 16 of the deposition, the statement I
22 read to you earlier, what does the greater

23 certainty you mention with respect to the
24 debtors' ability to satisfy administrative and
25 other go-forward claims, what does that mean for

27

1 trade vendors specifically?

2 A. The higher the recovery during
3 this process achieves a greater amount available
4 to pay admin claims. And so the greater
5 certainty, the higher recovery, the greater
6 recovery that we're anticipating to be able to
7 payout to admin claims.

8 Q. How much are you projecting for
9 landlord recoveries under this proposed sale?

10 A. For stub rent, we're anticipating
11 full recovery. For rents that will be accrued
12 in January and February where I anticipate
13 paying that in full.

14 Q. Does that include leases that are
15 rejected?

16 A. We will pay January and February
17 rent, if we are utilizing the store. If the
18 lease has been rejected previously, then there
19 will not be any rent payments made to them.

20 Q. How much are you projecting for

21 professional fee claim recoveries?

22 A. We are anticipating full recovery
23 for professional fees.

24 Q. How is the stub rent being
25 funded?

28

1 A. The buyer is paying the stub
2 rent.

3 Q. Is the buyer paying the stub rent
4 in cash at closing?

5 A. To my knowledge, yes.

6 Q. Has AlixPartners completed a
7 conversion analysis?

8 MR. McCLAMMY: Objection to form.

9 BY MS. MASHBURN-MYRICK:

10 Q. Mr. Percy, do you understand what
11 I mean when I say "a conversion analysis"?

12 A. Are you talking about a
13 conversion from a Chapter 11 to a Chapter 7?

14 Q. Correct.

15 A. We have not done a formal
16 analysis, no.

17 Q. But you cannot tell the Court
18 with any certainty that trade creditors are

19 better off under this claim?

20 MR. McCLAMMY: Objection to form.

21 BY MS. MASHBURN-MYRICK:

22 Q. Under the sale proposed?

23 A. Based upon my experience, a
24 conversion to a Chapter 7 would yield
25 significantly less value to the estate, and

29

1 there would not be sufficient funds to pay
2 administrative claims probably anything at all.
3 And so I am anticipating that the recovery --
4 and it is my business knowledge and based upon
5 my experience that the recovery would be
6 significantly less in a Chapter 7 than it would
7 be in a Chapter 11.

8 BY MS. MASHBURN-MYRICK:

9 Q. Why haven't the debtors performed
10 an actual financial analysis of what recoveries
11 would look like if the case were converted to
12 Chapter 7?

13 A. We did not deem it necessary.

14 Based upon our experience and the
15 debtor advisors, as well as the lenders, that we
16 all cumulatively, in our conversation, nobody

17 proposed that there would be a greater recovery
18 in Chapter 7. And in all conversations that I
19 have had personally, there was no anticipation
20 that a Chapter 7 would yield greater value.

21 So we determined not -- there was
22 no need to do that analysis.

23 Q. What would -- what is required to
24 perform that analysis?

25 A. Just the general financial

30

1 analysis, and we need to do the modeling
2 appropriate.

3 Q. How long would that take?

4 A. To do it to the extent that we
5 would want it filed in court? Probably at least
6 a week.

7 Q. When did Gordon Brothers first
8 propose this sale transaction again?

9 A. They proposed a similar
10 transaction very early on in the case, as a
11 competitive bid against Nexus. They presented a
12 bid somewhat similar to this at the auction, but
13 it was deemed that it was of lower value than
14 the Nexus transaction, so we moved forward with

15 the Nexus transaction.

16 Q. And did Gordon Brothers again
17 bring this proposal to the debtors around
18 December 15th?

19 A. It was a little bit earlier than
20 that. Maybe a week earlier than that when there
21 was some concern about the Nexus deal closing.

22 Q. December 15th was a Sunday. A
23 week earlier than that would have been around
24 December 8th. So on or about -- and I won't
25 hold you to it exactly.

31

1 On or about December 8th, do I
2 understand you correctly that Gordon Brothers
3 proposed this sale transaction that does not
4 guarantee any payment to trade vendors on post
5 position --

6 A. It was not a formal proposal, but
7 they started mentioning it and saying that they
8 were available to do this. So a transaction
9 similar to this.

10 Q. Okay. So the debtors have had
11 over three weeks since this transaction, since
12 they started discussing this transaction with

13 Gordon Brothers again, and that's been ample
14 time for the debtors to perform a conversion
15 analysis, correct?

16 MR. McCLAMMY: Objection to form.

17 THE WITNESS: We did not
18 determine that a conversion analysis was
19 required.

20 BY MS. MASHBURN-MYRICK:

21 Q. The debtors are now telling the
22 Court and want the Court to find that trade
23 vendors and others would not do as well in a
24 Chapter 7 liquidation without giving the Court
25 the benefit of an actual financial analysis of

32

1 what a Chapter 7 liquidation would look like for
2 those constituencies, correct?

3 A. We had not performed a Chapter 7
4 liquidation analysis.

5 Q. Why do landlords get special
6 treatment over other administrative claimants in
7 the budget proposed?

8 MR. McCLAMMY: Objection to form,
9 and objection to the extent it's asking for a
10 legal conclusion.

11 But to the extent you have an
12 understanding, you could answer.

13 THE WITNESS: We are prepared to
14 budget in connection with the -- with GBRP, the
15 expenses that are paid in this budget, according
16 to this transaction, were mutually agreed upon
17 between the debtors and GBRP.

18 The landlord's expenses were
19 deemed to be recovered or were deemed to be paid
20 for January and February, as well as the stub
21 rents in their asset purchase agreement.

22 BY MS. MASHBURN-MYRICK:

23 Q. How much is Gordon Brothers
24 paying for the claims it's acquiring, Chapter 5
25 causes of action and other claims?

33

1 MR. McCLAMMY: The -- objection
2 to form. And -- yeah, just objection to form.

3 THE WITNESS: The consideration
4 is not detailed on a line-by-line basis. It is
5 essentially done cumulatively.

6 BY MS. MASHBURN-MYRICK:

7 Q. Has the debtor valued the
8 preference and other Chapter 5 causes of action

9 the estate has?

10 A. We have not.

11 Q. So the debtor cannot tell the
12 Court that it is getting their consideration for
13 transferring those claims, correct?

14 MR. McCLAMMY: Objection to form
15 and to the extent it calls for a legal
16 conclusion.

17 BY MS. MASHBURN-MYRICK:

18 Q. What is your basis for telling
19 the Court that their consideration is being paid
20 for the transfer of those claims if there's been
21 no financial analysis of what those claims might
22 be worth?

23 A. There is only one viable offer
24 that has been made; that is this offer, so there
25 are no competing bids. So this is the best and

34

1 only offer that has been provided.

2 Q. Do you understand that in a
3 Chapter 7 liquidation, claims might be pursued?

4 A. I do.

5 Q. And you are not able to tell the
6 Court what, if any, recovery could be

7 anticipated from those claims, are you?

8 A. I am not.

9 Q. Have you considered holding on to
10 the professional fee escrow and the stub rent
11 payments, the cash received under the sale
12 transaction pending further order of the Court?

13 A. The transaction testified that
14 those would be funded up front, and that is the
15 way that we have presented them, pursued them as
16 part of this transaction.

17 Q. But has the debtor considered
18 holding those funds for a later time so that the
19 Court can consider a pro rata distribution to
20 all administrative claimants?

21 A. We have not.

22 Q. Why not?

23 MR. McCLAMMY: Objection to form.

24 And we'll object to the extent that -- we'll

25 just direct you not to disclose privileged

35

1 communications in connection with your response.

2 If you have any other basis for
3 answering, you can answer.

4 THE WITNESS: The GBRP proposed

5 to pay those up front, and that is the -- that
6 is the way that we instructed the transaction.

7 BY MS. MASHBURN-MYRICK:

8 Q. Was there a counteroffer made by
9 the debtors? Did anyone go back to Gordon
10 Brothers and say, this consideration isn't going
11 to you? We want this money held for a later
12 order of the Court so that other administrative
13 claimants have time to be heard?

14 A. No one made that counteroffer.

15 Q. Why didn't the debtors consider
16 that?

17 A. Because we, as general advisors,
18 determined that this was the best use of funds
19 to administer the estate and pursue the
20 liquidation of the source.

21 Q. Who prepared the December 26
22 budget that was filed?

23 A. AlixPartners did it in
24 conjunction with other debtor advisors and
25 managements, as well as in collaboration with

36

1 the -- the purchaser and their advisor.

2 Q. Thank you.

3 A. Advisors.

4 Q. Thank you.

5 How was it determined how much in
6 professional fees would be needed?

7 A. We did an analysis of
8 professional fees that have been accrued
9 throughout the case. We had conversations with
10 the professional that will be -- will continue
11 to provide services, determine the appropriate
12 amounts, and confirm those with the applicable
13 professionals.

14 Q. Under the -- under the proposed
15 sale transaction, how much is being paid in --
16 how much is guaranteed to be paid on
17 administrative expense claims, including the
18 professional fees, stub rent, and other
19 administrative expense claims?

20 A. I have not calculated the total
21 post transaction administrative claims.

22 MS. MASHBURN-MYRICK: Okay.
23 Those are my questions, and I'll tender the
24 witness.

25 MS. ROGERS: This is Beth Rogers

1 for Simmons Bedding Company. I'd like to go
2 next, if that's okay.

3 MR. McCLAMMY: That's fine from
4 our perspective. I don't know if anyone else
5 has views on that.

6 EXAMINATION

7 BY MS. ROGERS:

8 Q. Why didn't the debtor list
9 their -- I think you referred to it as
10 consumable creditors, in its schedules who were
11 getting paid cash in advance prior to the
12 bankruptcy?

13 A. I'm sorry, can you repeat the
14 question?

15 Q. Why didn't the debtor list their
16 creditors who provided consumable product or
17 inventory in their schedules? It's my
18 understanding they were getting paid cash in
19 advance prepetition, and you kind of testified
20 to that.

21 A. We -- we absolutely requested
22 additional terms. They were not provided by
23 those vendors. And so instead of not having the
24 product at all, we paid them in cash in advance
25 because much of this product drives traffic

1 which consumers come into the store for, and
2 without them, the consumers stop coming to the
3 stores altogether.

4 Q. That wasn't my question. My
5 question is: Those consumable
6 vendors/creditors, were not listed in the
7 debtor's schedules. Why?

8 A. So what schedule are you talking
9 about specifically?

10 Q. The list of unsecured creditors,
11 potential preference creditors. Any part of the
12 debtors' schedules that would be applicable to
13 creditors who were paid within 90 days of the
14 petition date.

15 A. So there were definitely
16 consumable creditors that were listed in our
17 schedules.

18 Q. Can you tell me which schedule
19 those are on?

20 A. I do not have that information in
21 front of me. No, I cannot.

22 Q. What is the total amount of
23 payments made to consumable creditors in the 90

24 days before the petition date?

25 A. I do not have that information

39

1 available.

2 Q. Were those potential preference
3 claims included in any type of analysis that was
4 done of the total avoidance/preference claims
5 that are out there?

6 A. We have not done a preference
7 analysis. To the extent that there were
8 payments, those are listed as applicable.

9 Q. So if -- if the sales
10 transaction, it's my understanding it's proposed
11 that avoidance/preference claims will be sold to
12 Gordon Brothers, but Gordon Brothers will agree
13 not to pursue them.

14 Doesn't that again result in one
15 a group of creditors being preferred over
16 another?

17 MR. McCLAMMY: Objection to form.

18 If you have an answer, you can
19 answer.

20 THE WITNESS: This was the offer
21 from GBRP that is included in the asset purchase

22 agreement. We did not pursue an alternative
23 course.

24 BY MS. ROGERS:

25 Q. You didn't answer my question. I

40

1 know what you're saying was done, what was not
2 done. But I'm saying, doesn't it result in one
3 group of creditors being preferred over another?

4 A. I have not made a determination
5 of that and have not done that analysis.

6 Q. Well, based on your vast
7 experience, wouldn't that be the result?

8 MR. McCLAMMY: Objection to form.

9 THE WITNESS: I would not make
10 any statement that I have not done an analysis
11 on.

12 BY MS. ROGERS:

13 Q. But in the declaration, you make
14 numerous conclusions that the sale, the proposed
15 sale is better for creditors than a Chapter 7
16 liquidation. But you just testified that you
17 haven't done a liquidation analysis, you haven't
18 done a preference analysis, you haven't done a
19 claims analysis.

20 So how did you --

21 (Cross talk.)

22 (Court reporter seeks

23 clarification.)

24 BY MS. JACOBS:

25 Q. How can you make those statements

41

1 when you haven't done an analysis?

2 MR. McCLAMMY: Objection to form.

3 THE WITNESS: My statement of the

4 declaration was in regards to the cumulative

5 value that's available to all creditors. I have

6 not made a determination based upon specific

7 creditors at this time.

8 BY MS. ROGERS:

9 Q. When you say it's based on a
10 cumulative analysis, what are you referring to?

11 A. The cumulative value that was
12 achieved through the asset purchase agreement
13 versus a company-led wind down or any other
14 alternatives that were available to the debtor.

15 Q. So what is the cumulative value
16 for the APA versus a company-led wind down?

17 A. As been detailed in our budget

18 that was filed under Docket 1434, there is \$328
19 million of value that is coming to the estate
20 from this transaction.

21 Q. I'm sorry, you said 328 million?

22 A. \$328 million.

23 Q. And what is -- what is in a
24 company-led wind down?

25 A. The company-led wind down would

42

1 be very different because it would actually --
2 to be honest with you would be actually higher
3 because the full value of all of the assets
4 would all come into the estate. The difference
5 here is the certainty of the assets that are
6 coming in and the applicable expenses that are
7 covered by GBRP.

8 So the expenses, when netted
9 against the recovery, yield greater value in the
10 asset purchase agreement as compared to assuming
11 all expenses with a -- with a company-led wind
12 down.

13 Q. I'm not understanding your
14 answer.

15 So you just said that --

16 A. You asked me a question about
17 gross recovery, now I'm answering you in a net
18 recovery basis, because that is what is
19 applicable here.

20 Q. Okay. So what you're saying is
21 on a gross basis, a company-led wind down would
22 result in more value than the proposed sale?

23 A. It would --

24 MR. McCLAMMY: Objection -- hold
25 on.

43

1 Objection to form and misstates
2 the testimony.

3 But you can answer.

4 THE WITNESS: It results in more
5 inflows. It would also result in more outflows.
6 So on a net basis, the recovery would be less.

7 BY MS. ROGERS:

8 Q. And the reason there's less
9 outflow in the proposed sale is because certain
10 groups of creditors are not getting paid, right?

11 MR. McCLAMMY: Objection to form.

12 THE WITNESS: It primarily has to
13 do with the costs that are covered by GBRP. For

14 example, most of the store -- the cost to run
15 the stores, including store rents, store
16 payroll, DC rent, store operating expenses are
17 all covered by GBRP.

18 BY MS. ROGERS:

19 Q. So when you say they are covered
20 by GB, aren't they being covered by GB -- GB
21 from the operation of the stores and the
22 going-out-of-business sales?

23 A. They are covered by the value
24 that is achieved by selling the inventory and
25 other assets of the estate.

44

1 Q. So the answer is yes.
2 So on a net basis, what is the
3 cumulative value through the proposed sale
4 versus a company-led wind down?

5 A. We estimated that the recovery
6 would be approximately \$20 million under the
7 asset purchase agreement. It would be a
8 approximately 10 million for a company-led;
9 however, that does not include all of the risk
10 that is associated with recovering at the same
11 level that the company did earlier in this year

12 when there may have been higher demand for this
13 product.

14 Q. Well, isn't it true that you said
15 earlier that the value in the inventory has
16 basically been lost because the sales were not
17 completed before the end of the holiday season?

18 A. No, that is not correct. I had
19 stated that the recovery or the sales of the
20 type of product that Big Lots sells does better
21 in November and December than it does in
22 January.

23 And so their ability to sell
24 through this product in what amounts to the
25 month of January and February is more difficult

45

1 than it would be for the two months of November
2 and December, for example.

3 Q. Okay. So whether it's a
4 company-led wind down or through the sale,
5 proposed sale, the prospect of sales of the
6 inventory in January and February is the same
7 under either of those scenarios, right?

8 A. That is correct.

9 Q. By company-led wind down, what

10 does that mean?

11 A. It means that under the APA,
12 Gordon Brothers, GBRP is purchasing all of the
13 inventory and certain assets outright. In a
14 company-led wind down, the company would
15 administer all of the sales of the assets,
16 instead of having a fixed number, such as what
17 is anticipated in the APA coming into the
18 estate.

19 And so they would collect
20 whatever value they can from those assets,
21 wherein it is a fixed known number under the
22 asset purchase agreement.

23 MS. ROGERS: Okay. I'd like to
24 go to the document that we were sent just prior
25 to the deposition, which is the APA comparison

46

1 schedule.

2 Danielle, can someone with your
3 office put that on the screen?

4 MS. MASHBURN-MYRICK: I'm going
5 to text about that. Be easier to print.

6 MR. GARCIA: This is it, right,
7 Beth?

8 MS. ROGERS: Yes, that is it,
9 thank you. Hang on. I have to get back to my
10 notes here.

11 Okay. So --

12 THE WITNESS: I'm sorry, could
13 you put it back -- that's way too small. Can
14 you put it back to the level it was earlier?
15 That's great. Thank you.

16 BY MS. ROGERS:

17 Q. Okay. So this is not -- this
18 document that is on the screen, which is the APA
19 comparison schedule 12-30-24, this is not been
20 filed in the bankruptcy case, correct?

21 A. Correct.

22 Q. Is there a reason why?

23 A. It was an analysis that was done
24 internally, to determine whether a company-led
25 wind down or pursuit of the asset purchase

47

1 agreement was the best pursuit. It was only
2 shared internally within the company at the
3 direction of the company's advisors, including
4 Davis Polk.

5 Q. And do you think it's important

6 for creditors to understand the actual numbers
7 and the various scenarios?

8 A. We have provided the document to
9 you, so I'm happy to answer any questions you
10 have.

11 Q. That's not an answer. There's
12 been no notice. There is -- you know, I think
13 we got the document about 7 o'clock tonight.
14 We've already had, you know, a full day of the
15 sale hearing.

16 Anyway, so when you were talking
17 about the company-led wind down, which column
18 does that follow on the --

19 A. The far left column.

20 Q. The far left. So the wind-down
21 budget as of 12-21?

22 A. That is correct.

23 Q. Okay. And when you say on this
24 document -- and who prepared this document?

25 A. The debtors' advisors in

48

1 coordination with the company.

2 Q. The company is who?

3 A. Big Lots.

4 Q. Oh, okay. Big Lots.

5 So the "downtime wind-down
6 budget," what does that mean?

7 A. The only difference in that
8 column is that we used a GOLV of 120 percent
9 versus the 125 percent in the wind-down budget.
10 And the rational for that was, we wanted to
11 demonstrate the risk if the inventory did not
12 recover at levels that were commensurate with
13 what they had achieved in prior store closings
14 because of the timing, because of the situation
15 that the company is in, and competitive
16 pressures on the store closings sales.

17 Q. I thought that at the sale, at
18 the hearing today, the debtor stated that no
19 more inventory would be purchased?

20 A. That is correct. We have
21 terminated all POs and have not been purchasing
22 inventory.

23 Q. So then why would you need to
24 make a comparison at -- to show a risk if the
25 inventory does not recovery on this achievement

1 prior to store closings?

2 A. Well, for example, this inventory
3 includes inventories in the stores in GCs
4 currently, but it is just the -- based upon the
5 discounting schedule that occurs in a store
6 liquidation. The faster inventory sells, the
7 lower the discount on the inventory is.

8 The discount is what drives
9 customers into the store. So if you're not
10 selling as much, then more is sold at a higher
11 discount, and so the value of that inventory is
12 less to the estate.

13 Q. Okay. And then the column that
14 says, "AKA Schedule," what does that refer to?

15 A. That refers to the GBRP offer and
16 all the terms that are in the asset purchase
17 agreement and the agency agreement.

18 Q. Okay. So if we go down -- and
19 these numbers are stated in millions?

20 A. Thousands.

21 Q. Thousands?

22 A. Yes.

23 Q. So when it says at the top, "Net
24 proceeds 626,497," that's 626,497,000?

25 A. Or said differently \$626 million.

1 Q. I just asked you, are the numbers
2 stated in millions or thousands? You said,
3 "thousands."

4 A. And I answered you accurately, if
5 you put three zeros at the end, that is
6 thousands. If you put six zeros at the end,
7 that's millions. That would be \$626 billion.

8 (Court reporter seeks
9 clarification.)

10 THE WITNESS: Billions with a
11 "B."

12 BY MS. ROGERS:

13 Q. Okay. So the number in the first
14 column next to net proceeds, it says 626,497,
15 that's 626,497 million?

16 A. Correct.

17 Q. Okay. So if we go down to the
18 bottom of the budget or I guess comparison, it
19 says, "Net net cash available for distribution."

20 Do you see that?

21 A. Yes.

22 Q. Okay. So in the first column,
23 under wind-down budget, it states 325,954
24 million. Correct?

25 A. Correct.

51

1 Q. And so that is the projection
2 based on the debtors' wind-down budget using the
3 GOLV of 125 percent, correct?

4 A. Correct.

5 Q. And then if we go to the next
6 column, the downside, downside wind-down budget
7 under the net cash available for distribution,
8 it states 299,340 million, correct?

9 A. Correct.

10 Q. And then if we go to the last
11 column, the APA schedule, it shows 19,330,000,
12 correct?

13 A. Correct.

14 Q. So the comparison that we are
15 looking at shows that under the proposed sale,
16 there will be less money available for
17 distribution to creditors under the proposed
18 sale versus a wind down. Is that right?

19 A. That is not correct. The
20 proposed sale includes a payoff of all of the
21 DIP ABL, the DIP FILO, and a letter of credit
22 claims --

23 (Court reporter seeks
24 clarification.)

25 THE WITNESS: Sure.

52

1 The APA schedule column
2 contemplates a payoff of the ABL, the
3 asset-based loans, the FILO loan, and cash
4 collateralization of the LCs at close, so those
5 obligations are not outstanding.

6 So said slightly differently, I
7 would compare the 19,330 million to the 10
8 million and the minus 15 million in the other
9 two columns.

10 BY MS. ROGERS:

11 Q. I am not following you at all
12 there, so --

13 A. Well, can you scroll -- can
14 whoever has it on the screen, can you scroll
15 down to the bottom of the page, please? Keep
16 going.

17 So the 19,330 that's on the far
18 right, that is comparable to the 10,808 and the
19 15 -- and the negative 15,805 because the debt
20 has been paid in full. So that is a way that I

21 would compare the three alternatives.

22 Q. Okay.

23 A. There is no debt outstanding
24 under the APA because it is paid out in full as
25 part of this transition.

53

1 Q. No debt to secured lenders,
2 right?

3 A. The debt is paid off in full upon
4 finalization of the transaction. So if it
5 finalizes this Friday, the debt will be paid in
6 full to those parties.

7 Q. All right. Now I'm not
8 understanding what you're saying.

9 So under the APA column, where
10 does it show the payoff of the secured debt
11 upon --

12 A. It is not, it is not -- it is not
13 in that column.

14 MR. McCLAMMY: For the sake of
15 the court reporter, please let her finish her
16 question first, please.

17 THE WITNESS: It is not in that
18 column because the terms of the transaction are

19 that it is paid off right away.

20 So it is not a obligation that
21 needs to be paid off because GBRP pays off those
22 obligations at the beginning -- as of the
23 transaction date.

24 BY MS. ROGERS:

25 Q. Okay. So down below, "net cash

54

1 available for distribution," it lists DIP ABL
2 DIP FILO and LLC claims, right?

3 A. Correct.

4 Q. Okay. And so is that showing the
5 total amount of secured debt that the debtor
6 owes?

7 A. As of December 21st, yes.

8 Q. So above, the line that says,
9 "net cash available for distribution," none of
10 the columns contemplate paying the secured debt,
11 right? There's no expense listed for the
12 secured debt in any of these columns above the
13 net cash line?

14 MR. McCLAMMY: Objection to form.

15 BY MS. ROGERS:

16 Q. Let me restate it.

17 MR. McCLAMMY: If you understand
18 the question, you can answer it.

19 THE WITNESS: Actually, is there
20 a question there or is that just a statement?

21 So the debt is paid off in full
22 in all three circumstances. It is --

23 BY MS. ROGERS:

24 Q. That's not the question, sir.
25 Sir, that's not my question. I'm asking you to

55

1 tell me what the document says.

2 In the -- above the line, the row
3 that says, "Net cash available for
4 distribution," none of the columns list as an
5 expense being paid from gross proceeds, the
6 secured debt; right or wrong?

7 MR. McCLAMMY: I think he's
8 answered your question by telling you that it's
9 appearing below that line, but --

10 BY MS. ROGERS,

11 Q. Well, that wasn't my question.
12 My question is: Does it or does it not -- is
13 the secure debt listed as an expense above the
14 net cash row in any of the columns?

15 MR. McCLAMMY: So are you
16 essentially asking: Is it only appearing on
17 this document once where it's listed below and
18 not twice all the way above? He's telling you
19 that it's listed there and it's listed below.

20 MS. ROGERS: I'd like to the
21 witness to answer, not the attorney.

22 MR. McCLAMMY: I'm not answering,
23 I'm just trying to understand what the question
24 is.

25 MS. ROGERS: Well, let me

56

1 rephrase it for the third time or fourth time.

2 BY MS. ROGERS:

3 Q. Yes or no, does this comparison
4 list, as an expense, in any column above the row
5 that says net cash, the payoff of the secured
6 debt?

7 A. So there are two rows that say
8 net cash. So can you be -- can you read the
9 entire column that you're asking -- or row that
10 you're asking about?

11 Q. Yes. It says: "Net cash
12 available for distribution." And then it has

13 325,954 under the first column, 299,340, under
14 the second column, and 19,330 under the third
15 column.

16 A. So under the third column, the
17 debt is paid off in full as of the transaction
18 date, which is anticipated to be this week.

19 So it is already taken out. It
20 is not listed in that column, but it is already
21 paid off to zero in the APA schedule.

22 So it is not listed on there, but
23 it is assumed to have been paid in full in the
24 APA column at the row that you're asking about.

25 Q. So when the document shows

57

1 outflows and variable operating expenses, it
2 isn't accounting for above that row, "net cash
3 available for distribution," it's not accounting
4 for it in the APA column. You're saying it's
5 just assumed.

6 So the number --

7 A. That is correct.

8 Q. -- if I conducted -- in the AKA
9 -- APA column, if I go through it and I deduct
10 from 231,103, which is the total influx of the

11 opening cash and I deduct all these other
12 numbers that are below that, but before the net
13 cash available for distribution row, I'm not
14 going to come up with 19,330 million.

15 Is that what you're telling me?

16 A. No. That is incorrect.

17 Q. Okay. Then how is it incorrect?

18 A. Well, just doing simple math, 231
19 minus 96, minus 99, is -- that's about \$36
20 million, minus 15 is roughly \$20 million.

21 So without -- with rounding, it
22 comes to roughly \$20 million just based upon the
23 millions in the context column.

24 Q. Okay. So the 19,330 million, is
25 the net amount after payment of only the

58

1 expenses that are listed above the net cash
2 available for distribution row?

3 MR. McCLAMMY: Objection to form
4 and misstates his testimony. It may make sense
5 to take a quick break to allow you --

6 MS. ROGERS: I want to finish my
7 line of questioning.

8 MR. McCLAMMY: Okay.

9 MS. ROGERS: I'm trying to
10 understand why the net cash available for
11 distribution is not apples to apples. The three
12 columns show 325 -- 299 to 40 --

13 (Court reporter seeks
14 clarification.)

15 MS. ROGERS: I'm sorry. It is
16 8:18 at night and I have been working since 7:00
17 a.m.

18 MR. McCLAMMY: The court reporter
19 doesn't deserve that, like, she's helping us out
20 on short notice.

21 MS. ROGERS: The numbers are on
22 the screen.

23 (Court reporter seeks
24 clarification.)

25 MR. McCLAMMY: I'm not trying to

59

1 interrupt your flow but --

2 MS. ROGERS: Yes, you are. Yes,
3 you are. Yes, you are.

4 MR. McCLAMMY: Just let me
5 finish. I would say, it may be helpful --

6 MS. ROGERS: Let me finish.

7 BY MS. ROGERS:

8 Q. My question is: These numbers,
9 under "net cash available for distribution"
10 represent what is available after the expenses
11 are deducted, other than the secured claims.

12 All three columns represent that,
13 right?

14 MR. McCLAMMY: Objection to form.
15 Misstates the testimony.

16 But to the extent you can answer,
17 you could answer.

18 THE WITNESS: Ma'am, maybe it
19 would make more sense if you add \$315 million to
20 the 19,330. That is what would be available if
21 the debt had not been paid off.

22 The debt is paid off as part of
23 this transaction. So it is not part of the
24 equation.

25 The -- if you pull the \$19

60

1 million down to the bottom row, it would -- all
2 of those would be the cash that is available to
3 pay administration -- administrative claims.

4 BY MS. ROGERS:

5 Q. Why don't you just deduct -- it
6 doesn't make any sense. It's a
7 misrepresentation. It makes it look like it's
8 more cash available under the other two columns
9 than the APA schedule.

10 So why don't you just take the
11 19,30 and put it in the net cash available for
12 administrative claims column?

13 A. This was not prepared for filing
14 within the Court. We provided this for
15 information because we assumed that you would be
16 asking questions. This was not prepared as an
17 exhibit. It was an analysis that was presented
18 to management and the board of directors.

19 They had no problem following it,
20 so it worked for that audience. So it's not
21 meant to be filed as an exhibit or in court. So
22 it was not done as such.

23 Q. Isn't the estimated accrued
24 administrative claims 300 million?

25 A. I do not believe that much.

61

1 Q. What is it, then?

2 A. I believe it is about 216 million

3 of open AP, about 38 million of 503(b)(9) claims
4 and approximately 17 million of stub rent.

5 Q. What about professional fees?

6 A. We escrow professional fees on a
7 weekly basis and those are reflected in our
8 budget as such, and, therefore, we do not have
9 those as an outstanding admin claim in our
10 calculation.

11 Q. How much is in the escrow for
12 professional fees currently?

13 A. It's approximately \$40 million.

14 Q. How much has been paid for
15 professional fees so far?

16 A. Approximately \$15 million.

17 Q. And Alix -- Alix's professionals
18 fees are in that pool, correct?

19 A. They are.

20 Q. How much is Alix owed?

21 (Court reporter seeks
22 clarification.)

23 BY MS. ROGERS:

24 Q. How much is Alix owed?

25 A. I have not looked at the number

1 recently. I'm not sure.

2 Q. How much is the debtors' counsel
3 owed?

4 A. I haven't looked at specific
5 professionals.

6 Q. I thought you said earlier that
7 this all went into your analysis in your
8 declaration, how much the professional fees were
9 owed and that they were -- analysis done of what
10 was owed to professionals and what is projected
11 future amount of professional fees.

12 So is that not true?

13 A. We have a schedule of all of
14 this. I have not familiar with what each row
15 is. I know that -- what the cumulative number
16 is, and that's what is reflected here.

17 Q. Reflected on this comparison.

18 So is that what you're saying?

19 A. No. There is no escrow -- there
20 is no escrow for professional fees to date on
21 this comparison. This is for future
22 professional fees that will accrue over the next
23 couple of months.

24 Q. So you're saying on the
25 comparison, where it says "other costs," those

1 are future professional liquidator and U.S.

2 Trustee fees?

3 A. That's correct.

4 Q. So then when you're looking at

5 the 19,330 million under the APA column, you

6 would have to deduct the already accrued

7 professional --

8 (Court reporter seeks

9 clarification.)

10 MS. ROGERS: Fees.

11 THE WITNESS: That is not

12 correct.

13 BY MS. ROGERS:

14 Q. Why?

15 A. The \$19 million number is net of

16 all the costs above. So I would not take that

17 out twice. It's already been taken out once.

18 Q. Okay. So then where does it show

19 on here already accrued professional fees?

20 A. It does not, because they are in

21 a separate account. So there are no

22 disbursements to that escrow account that are

23 necessary. Those funds have already been set

24 aside.

25 Q. Okay. So if there's 40 million

64

1 in the escrow for professional fees, but it's
2 not accounted for in this comparison, there
3 could be in excess of \$40 million, then, right?

4 A. No. That is not correct. Based
5 upon our estimate and our conversations with
6 professionals as well as the applications that
7 have been filed, the professional fees to date,
8 the estimated professional fees to date have
9 been set aside in the escrow accounts.

10 Q. Okay. But you just told me you
11 don't know what the accrued professional fees
12 are, so --

13 A. I don't know.

14 Q. -- so the 40 million is less or
15 more than what the accrued professional fees
16 are?

17 MR. McCLAMMY: Objection to the
18 form. Misstates his testimony and the questions
19 that you've asked.

20 If you understand her question,
21 you can answer.

22 THE WITNESS: You asked me about
23 specific professionals. I do not recall what is
24 in each specific professional's row I view.
25 You also asked me about

65

1 cumulative, and I looked at cumulative recently,
2 and those are the numbers that I provided to
3 you.

4 MR. McCLAMMY: And we've been
5 going for a while. Why don't we take a break.
6 Let's come back in 15 minutes. Make it even,
7 come back at 8:45.

8 MS. ROGERS: Sure.

9 (RECESS TAKEN 8:27 p.m.)

10 (RECESS ENDED AT 8:46 p.m.)

11 BY MS. ROGERS:

12 Q. In the comparison schedule, if --
13 so that I could put that back on the screen,
14 what does the APA admin budget and APA wind-down
15 budget under inflows. What do those mean?

16 A. Those are the value that is their
17 transaction. So there are certain assets that
18 are set aside for the estate, which includes the
19 value of the building over 10 million.

20 So 10 million is the collateral
21 that is in the FILO. So the FILO -- so that has
22 been set aside, and then our estimated proceeds
23 on the building of 34.5 minus 10, is 24.5.

24 The outstanding litigation is
25 split 60/40 between the estate and the buyer.

66

1 So 60 percent of the 5 million for outstanding
2 litigation is in that column.

3 The numbers that are included in
4 Exhibit F and G are 49,8, which is a combination
5 of the 42,391, and the professional fee escrow.
6 Those are the 49,891 that are in the admin
7 budget, which is schedule -- or, I'm sorry,
8 Exhibit F.

9 The 125 is Exhibit G.

10 Then the additional value is part
11 of the asset purchase agreement, the income tax
12 refunds go to the estate. So that is estimated
13 at \$6 million. That is listed in here.

14 And then there are certain
15 mitigation items, such as the Variety severance.
16 So under a circumstance where 200 stores are
17 transferred from Big Lots to Variety, those

18 employees would continue to have ongoing
19 employment, and that would mitigate their
20 severance.

21 So that is allocated here at 200
22 stores. And then the stub rent of \$17 million
23 that is also covered by the asset purchase
24 agreement is included here, all of that combined
25 totals to \$231 million.

67

1 Q. Well, isn't that an outflow
2 rather than an inflow from severance -- isn't
3 that an --

4 (Court reporter seeks
5 clarification.)

6 BY MS. ROGERS:

7 Q. My question is -- so the 17
8 million for stub rent, it's in the -- under the
9 heading called "inflows," as in inflows, income
10 proceeds?

11 A. As part of the asset purchase
12 agreement, the buyer is recovering stub rent.
13 So it is an inflow to show the value coming in.
14 As you can see from the outflows below, it is
15 also listed as an outflow. So net to the estate

16 is zero, whereas in a company-led wind down,
17 those obligations would be exclusively the
18 obligation of the company.

19 So there would be no inflow, but
20 there still is an outflow in a company-led wind
21 down. So they're listed as an outflow under
22 both, but only an inflow under the asset
23 purchase agreement.

24 BY MS. ROGERS:

25 Q. So under the APA schedule, or the

68

1 proposed sale, wouldn't there also be GOB retail
2 proceeds?

3 A. I'm sorry, I couldn't understand
4 you.

5 Q. I said in the proposed sale, or
6 under the APA schedule column, won't there also
7 be GOB retail proceeds?

8 A. From the -- are you asking about
9 from the sale of inventory?

10 Q. Well, you have got GOP -- GOB
11 retail proceeds under inflows in the two columns
12 for wind-down budget, but you don't have
13 anything for APA schedule. But in the proposal,

14 aren't there going to be GOB sales, right?

15 A. The consideration that as part of
16 the asset purchase agreement is these numbers
17 that are included here.

18 The sale of the inventory goes to
19 the buyer. So there are no proceeds for
20 specifically relayed exactly to the inventory
21 sales.

22 It is covered as a net inflow,
23 and these numbers, plus the outflow of expenses
24 that the buyer is covering.

25 So it is not an inflow as part of

69

1 the asset purchase agreement.

2 Q. Okay. So that was going to be my
3 next question. In the outflows, like under the
4 heading for stores, there's 89 -- I guess it's
5 89,345 in both wind-down columns but nothing
6 under the APA schedule. So that's because the
7 buyer would be assuming those costs?

8 A. Correct.

9 Q. And how much is Variety paying
10 for 200 stores?

11 A. There is an agreement between

12 GBRP and Variety. We do not have access to that
13 agreement, so I do not know the answer to that
14 question.

15 Q. So the purchase price that the
16 APA proposes GB is paying, that does not include
17 the sale of the 200 stores to Variety?

18 A. That is the side agreement
19 between GBRP and Variety and is not part of the
20 consideration included in this agreement.

21 Q. Okay. So I just want to be
22 clear. The purchase price that is being paid
23 under the proposed sale is only what GB is
24 proposing to pay. Is that right?

25 A. It is what GBRP is planning the

70

1 estate, correct.

2 Q. Other than Variety, are there any
3 other potential buyers of the debtors' assets?
4 So my understanding is that the agency agreed
5 that the APA proposer, GB, to sell the debtors'
6 assets to other buyers.

7 Have there been any discussions
8 with the other parties other than GB -- I mean,
9 Variety?

10 A. There have been no discussions
11 between GBRP and the estate on whom those
12 parties would be.

13 Q. If the trade vendors have not
14 provided those petition product, would Big Lots
15 have been able to keep operating during the
16 bankruptcy case?

17 A. They would not.

18 Q. If the trade vendors had not
19 provided post-petition product, would Big Lots
20 have been able to attract any potential buyers?

21 A. I think it is highly doubtful
22 that they would.

23 Q. Would Nexus have been willing to
24 make a bid and potentially buy the debtor if the
25 inventory levels had not been replenished during

71

1 the bankruptcy case?

2 MR. McCLAMMY: Objection to form.

3 THE WITNESS: I would expect that
4 Nexus would not have been willing to purchase
5 Big Lots if they were not able to replenish
6 their inventory stock.

7 BY MS. JACOBS:

8 Q. How much total post-petition
9 product was provided by vendors?

10 A. I don't know the answer to that.

11 Q. Do you know how much of the total
12 post-petition product that was provided by
13 vendors was not paid for?

14 A. Approximately \$216 million.

15 Q. Why in the proposed sale are
16 trade creditors not treated as go-forward
17 administrative claims so that they don't pay for
18 the post-petition product, which is being used
19 to fund the sale and the other go-forward
20 expenses?

21 A. This budget was prepared in
22 conjunction with GBRP, and at their direction,
23 we are not paying any merchandise vendors in
24 this budget during this period of time.

25 Q. And GB doesn't have an interest

72

1 in paying the vendor creditors because it's not
2 going to operate any of the stores, right?

3 MR. McCLAMMY: Objection to form.

4 THE WITNESS: I don't know what
5 GB's incentives are.

6 MS. JACOBS: That's all the
7 questions I have for now. I reserve my right to
8 go back after other parties have a chance.

9 MS. CASEY: This is Linda Casey.
10 Would this be an appropriate time for me to go
11 forward?

12 MR. ANGELICH: Hi, Linda. It's
13 George Angelich. I just had a couple of
14 questions.

15 MS. CASEY: Go for it.

16 MR. ANGELICH: Thank you. All
17 right.

18 EXAMINATION

19 BY MR. ANGELICH:

20 Q. Nice to meet you, sir. My name
21 is George Angelich, and I'm an attorney with the
22 law firm ArentFox Schiff, and we are counsel to
23 Meta Platforms. If I -- if I ask any questions
24 and you need me to repeat myself, you know,
25 please say so.

73

1 So what I wanted to start with is
2 your declaration in support of the sale.

3 In paragraph 5 --

4 MR. ANGELICH: And we'll go ahead
5 and put that up now. If someone could -- there
6 we go.

7 BY MR. ANGELICH:

8 Q. Paragraph 5 of your declaration.
9 It contains a long list of cases you've been
10 involved with. Can you tell me which of those
11 cases converted to Chapter 7, rather than
12 confirmed?

13 A. None of the cases converted to
14 Chapter 7.

15 Q. I want to turn to paragraph 12.
16 It says in paragraph 12 of your
17 declaration that -- if I may. It refers to the
18 DIP lenders wanted to hear directly from Nexus
19 about the progress. Is that -- is that correct?

20 A. That is correct.

21 Q. Why didn't Nexus provide an
22 update?

23 A. They did not communicate with me
24 why they did not provide an update.

25 Q. Do you know who 1903 P Loan

74

1 Agent, LLC is?

2 A. I believe based -- but I'm not
3 positive. But I believe that is the FILO
4 lender, but I'm not positive. It sounds like
5 close to what the FILO lender's name is.

6 Q. Is 1903 P Loan Agent an affiliate
7 of Gordon Brothers?

8 A. It is -- yes, it is.

9 Q. And 1903 P Loan Agent, if I were
10 to tell you that it was the term loan agent,
11 would you think that that -- does that basically
12 line up with your understanding, or is it close
13 enough?

14 A. That lines up with my
15 understanding.

16 Q. In 1903 P Loan Agent, or Gordon
17 Brothers, in addition to being the
18 administrative agent collateral agent for the
19 term loan, also that loan has a second priority
20 lien on the ABL priority collateral. Is that
21 right?

22 MR. McCLAMMY: Objection to form.

23 BY MR. ANGELICH:

24 Q. Does 1903 P Loan Agent -- strike
25 that.

1 Does the term loan, was it
2 granted a second priority lien on the ABL for
3 priority collateral.

4 A. It was.

5 Q. Gordon Brothers, as an affiliate
6 of the term loan agent, actually then is the
7 agent for the term loan and controls the entity
8 that has a second priority lien on the ABL
9 priority collateral. Is that --

10 MR. McCLAMMY: Objection to form.

11 BY MR. ANGELICH:

12 Q. -- basically a correct statement?

13 A. To my knowledge, yes.

14 Q. In -- if you could go up to
15 paragraph, I think, it's 2 of the motion. So
16 it's all the way up at the beginning of this
17 document.

18 It says in -- no, actually
19 paragraph 1, yep. Last line begins with Gordon
20 Brothers Retail Partners, LLC, GBRP, who was the
21 only party other than Nexus to have submitted an
22 actual bid to the debtors prior to the auction.

23 Did Gordon Brothers submit a bid
24 prior to the auction?

25 A. They did.

76

1 Q. Is it the same bid that you're
2 now asking to approve in the sale hearing.

3 I'm sorry, I spoke over you. My
4 apologies. Could you repeat your answer?

5 A. It is not the same bid.

6 Q. Can you tell us how it differs?

7 A. There were numerous negotiations
8 that have happened over the last couple of weeks
9 that have increased the consideration and the
10 value to the estate. Those -- that incremental
11 value is significantly more than what was
12 offered at the -- prior to the auction.

13 Q. And is Gordon Brothers actually
14 paying anything to 1903 P Loan Agent?

15 MR. McCLAMMY: Object to the
16 form.

17 MR. ANGELICH: Are you
18 instructing him not to answer?

19 MR. McCLAMMY: Did you hear me
20 instruct him not to answer?

21 MR. ANGELICH: I'm sorry.

22 BY MR. ANGELICH:

23 Q. Okay. Then, Mr. Percy, do you
24 understand the question?

25 A. I understand the question. I

77

1 would assume that 1903 is going to communicate
2 that its facility has been paid in full. As to
3 the form of the transfer between the parties, I
4 am not aware of how that will take place.

5 Q. I'm going to skip to another
6 document now. Your retention application, it's
7 Docket Number 206-4. And in your disclosures,
8 you mention that you have a prior relationship
9 with Gordon Brothers, and you actually have --
10 they were a client and they provide vendor
11 services to AlixPartners. I think it's a few
12 more rows down, lines down. Pages down.

13 So I'm putting this up just to
14 help maybe speed things along.

15 Can you tell us whether your firm
16 has any ongoing matters with Gordon Brothers
17 where they are providing services to you or you
18 are providing services to them?

19 A. We had worked with Gordon
20 Brothers numerous times in the past, and I'm

21 sure we are working with them currently.

22 Q. Did Gordon Brothers have a
23 relationship with Big Lots prior to the
24 bankruptcy filed?

25 A. They did.

78

1 Q. Did they provide a \$200 million
2 delayed term loan?

3 A. They provided a \$200 million FILO
4 loan.

5 Q. Did Gordon Brothers prepare a net
6 liquidation value analysis of the inventory?

7 A. I have not seen that analysis
8 that they did.

9 Q. Who at the company would know if
10 they did?

11 A. I don't remember.

12 Q. Do you know what a net
13 liquidation value analysis is?

14 A. I assume it's a valuation of the
15 assets of the company in a liquidation scenario.

16 Q. Can we turn to the asset purchase
17 agreement, Section 3.01.

18 Earlier you said that the

19 consideration was \$328 million; is that right?

20 A. As of December 21st -- no, I'm
21 sorry, 300 -- no, I'm not familiar with that
22 number.

23 Q. Okay. What is the total
24 consideration being paid for the assets?

25 A. That's a difficult question to

79

1 answer because they are taking on liabilities as
2 well. I would value those liabilities that
3 they're undertaking. So I'd have to add up all
4 of that, plus the payments they're making, which
5 I detailed on the page that was presented, but I
6 don't have that number calculated.

7 Q. So the purchase price is
8 comprised of these items listed in Section 3.01,
9 Romanettes i through v. Is that right?

10 A. According to the definition of
11 purchase price in this document, yes.

12 Q. And how much of this -- of these
13 items will the estate save? Can you tell us,
14 does the estate actually receive the \$304
15 million?

16 A. Their liabilities are reduced by

17 \$304 million, but the blow of funds goes
18 directly to the lenders. They are applicable.

19 Q. And how much of the \$304 million
20 will be flowing to 1903 P?

21 A. I don't know the exact number,
22 but I'm estimating it at about \$134 million.

23 Q. So out of the \$304 million being
24 transferred directly to the lenders, 134 million
25 of it is going to Gordon Brothers. Is that

80

1 correct?

2 A. To 1903, yes.

3 Q. Number -- Romanette Number 2
4 talks about stub rent.

5 What's your understanding of stub
6 rent? What is it?

7 A. Stub rent is rent from the period
8 of the filing date, which is September 9th
9 through September 30th. The estate did not pay
10 a large percentage of this rent in September,
11 and remains unpaid. This is an admin claim of
12 the estate, and that is what the \$17 million
13 calculation is based upon.

14 Q. Was that \$17 million promised

15 under the DIP budget?

16 MR. McCLAMMY: Objection to form.

17 BY MR. ANGELICH:

18 Q. If you understand my question,
19 you can answer it.

20 A. I don't recall. I don't recall.

21 Q. Why is it being offered now?

22 MR. McCLAMMY: Objection to form.

23 MR. ANGELICH: I'll restate the
24 question.

25 MR. McCLAMMY: You can answer if

81

1 you know.

2 MR. ANGELICH: Thank you.

3 THE WITNESS: It is part of the
4 purchase price that GBRP is proposing;
5 therefore, we have included it as part of the
6 liabilities that will be paid down for the
7 estate at the direction of the buyer.

8 BY MR. ANGELICH:

9 Q. Third -- the third Romanette, it
10 talks about \$42 million. And can you explain to
11 us what Romanette iii says?

12 THE WITNESS: These are

13 administrative expenses that are borne by the
14 company to administer the sale of the inventory
15 and other assets after the purchase price. This
16 is detailed in Exhibit F of the -- of the agency
17 agreement. That, plus the \$7.5 million for
18 professional fees total to the 49,891 in Exhibit
19 F.

20 BY MR. ANGELICH:

21 Q. So the purchaser is directing how
22 much of the \$42 million is going to be paid to
23 specific administrative creditors?

24 A. These are for expenses --
25 go-forward expenses of the estate that are

82

1 required to sell the assets. The debtor has
2 worked collaboratively with the buyer to
3 determine these numbers, and we have come to
4 that jointly.

5 Q. Will there be any service
6 providers or providers of goods who will go
7 unpaid during this period of the sale?

8 A. We're anticipating that expenses
9 that are necessary to wind down the estate will
10 be covered in full.

11 Q. Are there any expenses that will
12 be incurred that are -- that you deem are not
13 necessary for the estate?

14 A. We are not accruing those level
15 of expenses -- those type of expenses or
16 contracting with parties to provide those type
17 of services.

18 Q. There is, in Romanette iv, 125
19 million. Can you explain that?

20 A. These are expenses that are
21 liabilities of the estate that are for things
22 such as taxes or things such as WARN severance,
23 severance for employees, legal obligations for
24 things like paid time off that are being paid by
25 estate.

83

1 Q. And Romanette v, the seven and a
2 half million dollars for professional fee
3 escrow, that's going to be paid when, exactly?

4 A. That is going to be paid the
5 first week after the transaction.

6 Q. And then there will be additional
7 weekly contributions to the professional fee
8 escrow?

9 A. There are five weekly
10 contributions at the last five weeks of the
11 projection period ending March 8th, I believe.

12 Q. Do you know how much in total
13 will be contributed to the professional fee
14 escrow, beginning with the seven and a half
15 million dollar payment?

16 A. I believe it's approximately
17 \$13.8 million.

18 Q. If we could scroll down a little
19 bit further on that page. Right at the end of
20 that paragraph, before sub (b), it says,
21 "Provided further that upon seller's
22 satisfaction of accrued administrative claims in
23 the aggregate amount of \$100 million, any such
24 budget savings shall be retained by buyer for
25 its own account."

84

1 Are you estimating that
2 administrative claims were accrued --
3 administrative claims, I should say, is
4 approximately \$100 million?

5 A. I'm not.

6 Q. How was this number chosen?

7 A. It was proposed by the buyer.

8 Q. Did you push back in any way when
9 the buyer proposed a hundred million? Did you
10 say, that number should be higher?

11 A. We had discussions on numerous
12 items. This was one of them. I don't remember
13 the exact discussion of alternative amounts.

14 Q. In the sentence preceding the one
15 we just discussed, it talks about, "In the event
16 actual dollar amount funds necessary to satisfy
17 items covered by either the APA administration
18 budget or the wind-down budget are less than the
19 aggregate amount set forth in such budgets, any
20 such savings shall be available to the selling
21 entities to satisfy accrued administrative
22 claims."

23 Could you explain how that part
24 of this formula works?

25 A. So in the document that we

85

1 reviewed earlier that showed approximately \$19
2 million of recovery for the admin claims, if the
3 expenses associated with that for the cash
4 inflows regarding things such as tax refunds,

5 ongoing litigation accrued to a higher value,
6 then that incremental value over \$19 million
7 would go to admin claims.

8 Q. Does the debtor have a directors
9 and officers liability policy?

10 A. It does.

11 Q. Do you know the limits of that
12 policy?

13 A. I don't recall them exactly, no.

14 Q. All right. Do you know what the
15 premiums are?

16 A. I don't.

17 Q. Is the D&O policy, are all the
18 premiums paid? Are those all current?

19 A. To my knowledge, they are.

20 Q. Are there any insurance payments
21 that will be due after the sale closes?

22 A. For D&O insurance or for any type
23 of insurance?

24 Q. D&O insurance.

25 A. Not to my knowledge.

86

1 Q. Okay. How much in savings do you
2 anticipate being able to achieve?

3 A. I have -- the document that we
4 showed earlier was our best estimation of all
5 inflows and outflows. So there is upside, but
6 that is our best estimation of the recovery
7 that's going to be available for admin claims.

8 Q. And what will your role be in
9 monitoring spending and savings?

10 A. Exactly that. We will monitor
11 spending and savings and try to yield as much
12 value from the sale of assets and curtail
13 expenses as much as possible.

14 Q. What steps can you take to
15 curtail expenses?

16 A. We will work with our freight
17 providers to get goods to the distribution
18 centers and to the stores as for as little
19 consideration as possible.

20 We will work with our HR
21 department to make sure that payroll and
22 severance are applicable, but refrained as much
23 as possible.

24 Generally all of the operating
25 expenses of the business that are going to be

1 going on, we will be tracking and working with
2 the company to ensure that the maximum value is
3 available for the administrative claims.

4 Q. Did the DIP lender fund the \$3
5 and a half million dollar default or fund or
6 professional fees?

7 A. I do not believe so.

8 Q. Could you repeat your answer?
9 I'm sorry, I didn't hear you.

10 A. I do not think they have, no.

11 Q. Are they required to?

12 A. My knowledge, they are not.

13 Q. Do you -- I'm going to ask you
14 this question, but I think you already answered
15 it. So your lawyer will tell you not to answer,
16 if this, in fact, has already been asked of you.

17 But what are the total amount of
18 fees for the debtors' -- for the estate's
19 professionals to date?

20 A. I do not remember. I do not know
21 those line items exactly.

22 Q. Do you expect that all
23 professional fees will be paid in full?

24 A. I do.

25 Q. All right. I'd like to go

1 through the budgets and we'll start with the
2 wind-down budget. It's page 157 of page 186.

3 I realize that it's small. It's
4 tiny numbers. Can you see them okay?

5 A. Yeah, I can see them.

6 Q. All right. HQ severance total
7 6,595 million. Who's receiving HQ severance?
8 Any officers?

9 A. The severance that is applicable
10 under the WARN Act. So all employees that are
11 eligible under WARN are receiving this pay.

12 Q. Is this number in any way
13 modified for expected hires by Variety?

14 A. It is not.

15 Q. Do you have any reason to believe
16 that some of those people or personnel will be
17 hired by Variety?

18 A. Variety has asked to speak with,
19 i.e., interview some of the headquarters
20 employees. I don't have any personal knowledge
21 about who or how many employees they will take.
22 So it is not included in this budget, but that
23 is a potential upside savings if those

24 individuals are offered some employment.

25 Q. How many people are at HQ that

89

1 will be let go?

2 A. There are a total of 600 --

3 roughly 600 employees at the corporate

4 headquarters. In the end, all of them will be

5 let go.

6 Q. "DC severance," I guess that's
7 your distribution center?

8 A. Correct.

9 Q. How many employees are there?

10 A. I believe it's approximately
11 about 1200 employees.

12 Q. Are any of those employees union?

13 A. Not to my knowledge.

14 Q. "Store severance," you have total
15 of 27,157 million in this budget.

16 Do you have any reason to think
17 that some of the store employees will be picked
18 up by Variety?

19 A. They -- Gordon Brothers has made
20 the assertion that at least 200 stores will be
21 retained by Variety. The employees associated

22 with those 200 stores are expected to receive
23 employment offers. That could increase up to
24 400 stores.

25 Q. And does the \$27 million payment

90

1 account for potential hires, or is that just all
2 employees at stores right now?

3 A. That is all store employees.

4 Q. And so is it reasonable to say
5 that about half store severance would be saved
6 in the event that 400 stores are kept by Variety
7 or Gordon Brothers?

8 A. There are approximately a
9 thousand stores open right now. So it would be
10 closer to 40 percent if 400 stores are retained.

11 Q. Does that translate into 40
12 percent of \$27 million, or is that --

13 A. I have not done an analysis on
14 store-by-store basis and we don't know the exact
15 stores that Variety wants to take. But I think
16 that, as a rough estimate, is accurate.

17 Q. Going down to Q3 bonus and Q4
18 bonus. Why do we have bonuses in this budget?

19 A. These are store bonuses that are

20 paid to the store employees only. It is part of
21 their paid forward. It is a fee that they have
22 function forward throughout the organization,
23 and it continues here.

24 Q. Is this a policy of the company,
25 to pay these bonuses?

91

1 A. Yes.

2 Q. And it's an employee handbook
3 policy?

4 A. It's an employee policy. I don't
5 know if it's in the handbook or not.

6 Q. Where is the policy, then?

7 A. They communicate it to the
8 employees. It is input in documentation. I
9 have not seen that documentation. I have been
10 told about it, so I don't know what the nature
11 of the communication is, but I know that it's
12 been communicated to employees.

13 Q. And that's a policy that's been
14 observed historically, that's prior to the
15 bankruptcy, right?

16 A. Yes.

17 Q. Can you tell us what "IBNR"

18 means?

19 A. Incurred, but not received.

20 Q. Could you explain what that means
21 in this budget?

22 A. It is for benefit claims, almost
23 exclusively health care claims. So when
24 somebody goes to the doctor, their claim that is
25 filed by that doctor often does not get paid for

92

1 several months.

2 So this is an amount that has
3 been estimated by Anthem, the health care
4 administrator, on how much claims will be
5 outstanding as of roughly February 28th.

6 Q. Can you explain the worker's comp
7 disbursements, please.

8 A. These are the company itself
9 insured on worker's contribution -- I'm sorry,
10 worker's comp. These are the weekly payments to
11 the loss account that are made to handle claims
12 that are paid out in the ordinary course, as
13 well as to maintain ongoing coverage.

14 Q. In the event that --

15 MR. McCLAMMY: Just one quick

16 question. I think when you asked to go in front
17 of Ms. Casey you indicated you only had a couple
18 of questions --

19 (Court reporter seeks
20 clarification.)

21 MR. McCLAMMY: Yes, I was just
22 indicating to Mr. Angelich, I believe when he
23 asked to go in front of Ms. Casey, he only
24 indicated he had a few questions so I'm just
25 checking to see where we are in the process --

93

1 MR. ANGELICH: Almost done.
2 Sorry. Happy to wrap up very soon. Almost
3 done.

4 BY MR. ANGELICH:

5 Q. Can you tell us or can you
6 explain what will happen if the IBNR is not
7 adequately reserved for the worker's comp
8 disbursements will continue beyond March 8th,
9 what will be the net impact to the estate if
10 these estimates turn out to be low?

11 A. Those are two separate questions.
12 So the IBNR specifically, if this
13 estimation is low, then the medical

14 professionals that provided the services have
15 the right to go directly to the employee and
16 require payment from them directly.

17 So employees that thought they
18 had medical coverage will not in actuality ever
19 had medical coverage, and will receive
20 procedures as well as expenses that they thought
21 were taken care of by their medical coverage
22 but, in fact, will not be.

23 On the worker's comp, the company
24 potentially would not be covered for any type of
25 incident if it is not paying its premiums as

94

1 due.

2 Q. Have the employees been notified
3 of this possibility or potentiality?

4 A. We have not communicated anything
5 about this to the employees.

6 Q. Last question I have on the
7 budget.

8 The corporate wind down line
9 is -- there's no numbers here, right? Could you
10 explain why that is?

11 A. It was a line item that was being

12 funded previously, and should have been taken
13 out of the schedule and was not. It is not
14 funded as part of the asset purchase agreements.

15 Q. Okay. One last question and I'll
16 be done.

17 What could have been done
18 differently to avoid the current situation the
19 estate finds itself in in being unable to pay
20 administrative claims?

21 A. It could have closed on the sale
22 with Nexus.

23 MR. ANGELICH: I have no other
24 questions.

25 MR. PARROTT: Ms. Casey, I

95

1 represent a trade vendor and I just have one
2 clarification question, if you don't mind.

3 Thank you.

4 EXAMINATION

5 BY MR. PARROTT:

6 Q. Good evening, Mr. Percy. My name
7 is Evan Parrott, I represent Fusion Furniture.

8 And as I mentioned, Fusion is a
9 vendor who provided goods to the debtors pre-

10 and postpetition.

11 The one question I have, or I
12 should say one item I have is, the 19 million
13 that is referenced on the APA comparison
14 schedule, as far as net cash availability for
15 distribution, I believe it was your testimony
16 that that 19 million reflects what would be
17 available for admin claims that aren't otherwise
18 included in the -- the comparison schedule.

19 Does that 19 million include the
20 items that were discussed at the hearing today
21 meant to fund the admin payments? In other
22 words, like the sell of the corporate
23 headquarters in excess of \$10 million, is that
24 included in that 19 million, or is that a
25 different bucket?

96

1 A. No, the \$24.5 million that is
2 estimated recovery for the corporate
3 headquarters is included in that number.

4 Q. Okay. So that 19 million is
5 intended to be an all-encompassing number as far
6 as what is anticipated to be available for
7 admins?

8 A. That is an estimate. There is
9 obviously upside to that, but that is our best
10 estimate at this point.

11 Q. Okay. And I believe you
12 testified before that there are \$216 million of
13 unpaid trade vendor claims postpetition; is that
14 accurate?

15 A. That is -- that is the most
16 recent number that I have seen.

17 Q. Okay. Is there any other --
18 strike that.

19 Are there any other admin claims
20 that would be included in that bucket set to
21 share in that estimated \$19 million of proceeds?

22 A. The 503(b)(9) claims would be
23 included in addition to that.

24 (Court reporter seeks
25 clarification.)

97

1 THE WITNESS: The 5-0, 503(b)(9)
2 claims would be incremental to the 216 million.

3 BY MR. PARROTT:

4 Q. And what are the -- what is the
5 estimated total of the 503(b)(9) claims?

6 A. \$38 million.

7 MR. PARROTT: That is all the
8 questions I have. Thank you very much for your
9 time.

10 MS. CASEY: Has it come the time?

11 EXAMINATION

12 BY MS. CASEY:

13 Q. Good evening, Mr. Percy. Linda
14 Casey, I represent the United States Trustee.

15 I do apologize. This is not
16 going to be as efficient of questioning that I
17 would like it to be. I have a whole bunch of
18 notes, and I am going to try to get there.

19 So am I correct that there is --
20 and if this is too compound, let me know -- that
21 216 million in open AR, 17 million in stub rent,
22 38 million in 503(b)(9) claims and approximately
23 40 million in professional be paid claims
24 incurred to date that have not been paid.

25 A. The \$40 million of professional

98

1 fees have not been paid to the professionals.
2 They have been escrowed in a bank account. So
3 the money has been set aside. The open accounts

4 payable 503(b)(9) and stub rent that you
5 mentioned are correct.

6 Q. And the 216 million open AR,
7 there was discussion today, it was clearly not
8 testimony, that there is goods in transit to the
9 debtors.

10 Is that 216 include any goods
11 that have not yet been delivered yet? Could
12 that number actually increase?

13 A. That number is anticipated to
14 reflect all goods where title has transferred.
15 I can't say absolutely that every invoice is
16 included in there, but to my knowledge, that
17 includes everything including what in transit
18 that has been -- where title has been
19 transferred.

20 Q. Of that 216 open AR, how much of
21 that is past due by their terms?

22 A. I don't know the answer to that.

23 Q. Do you have an a rough percentage
24 of how much is past due?

25 A. As of a month ago, it was in --

1 almost none of it. I would expect a good

2 portion of it is past due at this point.

3 So...

4 Q. Okay. So as of a month ago, the
5 debtors were fairly current on paying vendor
6 claims, as in, when they were due; is that
7 correct?

8 A. That's correct.

9 Q. What is your -- if there is such
10 a thing, what is the general payment terms for
11 vendors? 30 days, 60 days, do you have a
12 general payment term?

13 A. It is vendor-specific. So it
14 differs by vendor.

15 Q. How much of the 260 open AR was
16 purchased after the debtors knew that there were
17 risks with closing the Nexus sale?

18 A. I don't know the answer to that.

19 Q. Do you have a rough percentage of
20 how much would have been purchased after the
21 debtors knew that there was a risk of closing of
22 the Nexus sale?

23 A. I don't.

24 Q. What was Gordon Brothers role in,
25 if any, in determining what inventory to

1 purchase and when to purchase it?

2 A. They had no role.

3 Q. How much -- how many 503(b)(9)
4 claims have been paid under various -- under the
5 first aid court orders?

6 A. Under -- there have been certain
7 critical vendor agreements that have been signed
8 in order to get goods flowing again that the
9 vendors refused to ship.

10 I don't know the number of those,
11 but it's not -- I don't know the number of
12 those, to be honest with you.

13 Q. Not at today's hearing, but at
14 the December 19th hearing, there was discussion
15 that the 17 million in stub rent was only for
16 those leases that were scheduled to be rejected
17 and that the leases that were scheduled to be
18 purchased by the Nexus purchaser, the stub rent
19 was being included in the cure. Is that
20 accurate?

21 A. The \$17 million is meant to cover
22 all stub rent.

23 Q. Going to the, I don't know what
24 we've been calling it, the wind-down budget

25 downside, wind-down budget APA schedule, if we

101

1 were to put into the inflow that portion of the
2 purchase price that reflects the pay down of the
3 debt, we would be adding the 315,146 up to the
4 231,103; is that accurate?

5 A. That is accurate.

6 Q. So not including the Gordon
7 Brothers assumption of certain liabilities,
8 there -- that price there would be -- that
9 inflow there would be 546,249 compared to the
10 over 800 million for the other two scenarios; is
11 that correct?

12 A. There are other liabilities that
13 Gordon Brothers is assuming over the 315, such
14 as store rent, store payroll, that would also
15 need to be added to that number.

16 Q. I understand that and we'll get
17 there. That's in the outflows.

18 But in this -- in this total
19 inflows and opening cash, it would be 546
20 compared to the 833 and 807; is that correct?

21 MR. McCLAMMY: Objection to the
22 form.

23 THE WITNESS: I don't think that
24 that's the right -- to be honest with you, I
25 don't think that that's the right way to

102

1 calculate it, adding those two numbers to total
2 546, but in my opinion, assuming liability is an
3 additional consideration as well.

4 BY MS. CASEY:

5 Q. Correct. But you have that
6 assumed liabilities in the outflows portion of
7 this document, correct? So I'm saying, if we're
8 looking at this document, that would be 547, and
9 then where they have assumed the liability, it
10 shows up in the outflows portion; is that
11 correct?

12 A. That's correct.

13 Q. Okay. So going down to the
14 outflows, the first level is payroll
15 headquarters, and it assumes that the debtors
16 would have paid 8.5 million approximately, but
17 that in the APA schedule, there's only 4.24.

18 Is there -- why is that a lower
19 amount for payroll in the APA scenario?

20 A. Because the APA is anticipated to

21 be closed on this week, whereas that 8.457 was
22 as of the 21st of December.

23 Q. So why would payroll be more on
24 the 21st on December than this week?

25 A. Because we had made two weeks of

103

1 payroll in the periods between the 21st and when
2 this deal is expected to be closed on, the 6th.

3 Q. And then the same question for
4 the distribution center payroll, 11.9 to 9.5.

5 Is that also reflecting that
6 payments have already been made?

7 A. Correct.

8 Q. So as we're sitting here today --
9 let me rephrase that question.

10 Have any of the inflows above
11 need to be reduced or increased based on the
12 fact that two weeks have gone by?

13 A. They do not.

14 Q. So if we were to go down to the
15 net cash available for distribution, we could
16 add in that approximately 5 million because of
17 the headquarters and the distribution center
18 payroll having been paid. Is that correct?

19 A. Well, the outstanding debt has
20 changed as well.

21 So what is outstanding -- what
22 will be outstanding later this week is going to
23 be a lower number.

24 So the way that we have prepared
25 this, because we had our inventory level as of

104

1 December 21st, we measured that date. So you
2 would have to adjust the outgoing debt as well.
3 So it's not completely like to like.

4 Q. So just to see if I understand
5 that correctly. If we go down to the total DIP
6 ABL, DIP FILO and LC claims, that number would
7 increase, it would no longer be 315, so when we
8 add it up to the total inflows and operating
9 cash, that number would be higher; is that
10 correct?

11 A. That number is lower because we
12 have been selling inventory over the last two
13 weeks and using those proceeds to pay down the
14 ABL.

15 Q. Let me go back and ask my earlier
16 question that I thought you had answered no.

17 If we go up to the net proceeds,
18 the GOB sale proceeds, net proceeds of 626 and
19 601, would those come down or would those stay
20 the same?

21 A. Those are as of December 21st.
22 So if they were measured again today, they would
23 be lower.

24 Q. Thank you.

25 So why are the -- so I take it

105

1 the DC and store rent, that it is zero there and
2 the 89 million stores' payroll, is because those
3 are actual obligations that the Gordon Brothers
4 is assuming. Is that correct?

5 A. The store payroll, correct.

6 Q. Now, is the difference between
7 what the Gordon Brothers is assuming versus what
8 they're paying for the wind-down budget and the
9 administrative -- the APA admin budget -- in
10 that Gordon Brothers is undertaking to pay
11 whatever the store payrolls are, whereas, if the
12 admin budgets and the wind-down budgets
13 underestimated, that will not be Gordon Brothers
14 liability, that will be the debtors' liability;

15 is that correct?

16 A. That's correct.

17 Q. Why is the IBNR listed on this
18 document 1,730,000 less under the APA?

19 A. Because we have -- we will have
20 terminated a significant -- a number of
21 employees because of previous rounds of store
22 closings will be effectuated.

23 So many of those employees will
24 have left over the past several weeks. So the
25 employee count is lower in this example as of

106

1 the end of the store closing process, which
2 would be at the end of February.

3 Q. When I read the actual agreement,
4 it appeared as though IBNR claims that have a
5 accrued from the petition date to the initial
6 closing date will not be included in the budget
7 and will not be paid.

8 Am I reading that document
9 correctly?

10 A. So IBNR claims are calculated --
11 well, let me backup.

12 The health care claims are

13 paid -- the company is self-insured, so they are
14 paid on an ongoing basis. So the company has
15 been paying those claims over the last nine
16 months.

17 To date, there are no significant
18 outstanding claims that have been filed. This
19 IBNR number is reflected as of what we would
20 anticipate the number to be as of February 28th.

21 So it was -- so if it takes three
22 months to have a claim come through for payment,
23 it would essentially be the doctor visits from
24 November 30th through February 28th that come
25 due over the next 90 days.

107

1 Q. So what in the budget is there to
2 protect the insureds for the stuff that they
3 incur from January through March under the
4 health care plans?

5 A. This IBNR payment. So this IBNR
6 payment will be made to Anthem as part of the
7 transactions.

8 Q. So maybe I didn't understand your
9 testimony. I thought you said that the \$11
10 million was for the claims that you anticipated

11 from the last 90 days that they've incurred from
12 November but hasn't been submitted yet.

13 Is the number in the budget
14 enough to pay anticipated claims that are
15 incurred all the way through the last day that
16 the last employee is covered through their
17 insurance program, or is it cut off at some
18 particular time that trailing expenses are not
19 included?

20 A. It is anticipated that the
21 employees will have coverage through
22 February 28th, which is also the targeted last
23 day of employment. So any doctor visit up until
24 that date are anticipated to be covered.

25 Q. Going to the wind-down budget.

108

1 Looking specifically at the U.S. Trustee fees
2 line, U.S. Trustees is paid -- has a budget of a
3 million dollars and is being paid on January --
4 weekending January 25th.

5 Is it correct to assume that
6 that's the U.S. Trustee fees for the quarter
7 ending December 21st, 2024?

8 A. That is our estimate, yes.

9 Q. Where are the fees that would be
10 due for the quarter ending March 31st, 2025, in
11 this budget?

12 A. They are paid outside of the
13 weeks of this budget and are anticipated to be
14 paid out of value within the estates post
15 March 8th.

16 Q. Do the debtors anticipate having
17 sufficient funds to pay those fees?

18 A. We do.

19 Q. What -- are all -- have all of
20 the bonus and severance payments contained in
21 these budgets approved by the Court?

22 A. Can you repeat the question?

23 (Court reporter seeks
24 clarification.)

25 THE WITNESS: Sorry, could you --

109

1 BY MS. CASEY:

2 Q. Were all of the severance and
3 bonus payments included in these budgets already
4 approved by the Court?

5 A. I don't believe they have been
6 submitted to the Court for approval.

7 Q. Is it the debtors' anticipation
8 that they will seek approval of the severance
9 and the bonus payments in these budgets?

10 A. I'm not aware of that
11 requirement. I have not had that conversation
12 with counsel.

13 Q. Reading through the ADPA, one of
14 the assets being transferred are all causes of
15 action owned by the debtors against any parties.

16 Are you aware of that?

17 A. Yes.

18 Q. Did that include claims that the
19 estate may have against estate professionals?

20 A. Sorry. You said transferred to
21 the debtor or transferred to the buyer? I'm
22 sorry.

23 Q. I misspoke. That part of the
24 acquired assets to be sold to the buyer are any
25 cause of action owned by the debtors against any

110

1 third party. Is that correct?

2 A. That is my understanding.

3 Q. And so that would -- and those
4 causes of action are any causes of action that

5 have accrued as of the initial closing date. Is
6 that correct?

7 A. That's my understanding.

8 Q. So that would include any causes
9 of action against any of the debtors -- excuse
10 me -- any of the estate professionals. Is that
11 correct?

12 A. I'm not sure of the answer to
13 that, to be honest with you.

14 Q. Is there any reason to believe
15 that the sale of all causes of action against
16 all parties does not include causes of actions
17 against the estate professionals?

18 A. I don't know the definition, so
19 I'm not the right person to ask that question,
20 to be honest with you.

21 Q. Does it include all causes of
22 action against Gordon Brothers?

23 A. I don't know this passage very
24 well. I was not involved in writing it. So I
25 don't know the answer to this question.

111

1 Q. Do you know who put the provision
2 in the asset purchase agreement that would sell

3 all causes of action owned by the debtors to
4 Gordon Brothers?

5 A. I don't.

6 Q. Have the debtors marketed those
7 causes of action separate and apart from the
8 ongoing business of the debtors?

9 A. Not to my knowledge.

10 Q. Has Nexus asserted that they are
11 entitled to either the breakup fee for the
12 expense reimbursement?

13 A. They have requested the breakup
14 fee, yes.

15 Q. Has that been included in any of
16 the budgets?

17 A. It has not.

18 Q. Will the debtors have funds to
19 pay that?

20 A. It is not in the budget, and it
21 is not anticipated to be paid in this budget.

22 Q. Did the debtors take a position
23 as to whether the breakup fee and the expense
24 reimbursement should be an allowed
25 administrative expense claim against the

1 estates?

2 A. I don't believe we've taken an
3 assertion on that at this point.

4 Q. Make sure that's all my
5 questions. I don't want to miss anything.

6 So am I reading this correctly
7 that as of the initial closing date, the only
8 assets being purchased by Gordon Brothers that
9 don't require Gordon Brothers to designate it is
10 the cash at the stores, and all of the other
11 assets that are being sold require Gordon
12 Brothers to come and designate that they're
13 purchasing those assets?

14 A. I'm not sure of that -- of that
15 question. I don't -- I don't know the answer to
16 that question.

17 Q. Why is there a separate agency
18 agreement having Gordon Brothers act as the
19 agent of the debtors to sell the inventory if
20 Gordon Brothers is purchasing the inventory and
21 the inventory is Gordon Brothers?

22 A. Gordon Brothers crafted that
23 separation. They did not justify to me why they
24 separated the two agreements.

25 Q. The proposed sale order has the

1 debtor releasing Gordon Brothers, but carving
2 out of that release causes of action based on
3 gross negligence, fraud, or willful misconduct.

4 Is it your understanding that any
5 causes of action against Gordon Brothers, based
6 on fraud, gross negligence, or willful
7 misconduct is being sold to Gordon Brothers?

8 A. Those are not my area of
9 expertise, and I have not been focused on this.
10 So I really don't have knowledge of how that is
11 crafted.

12 Q. What is your understanding about
13 the need close the sale this week?

14 A. The company has not received new
15 inventory from vendors and is the value of the
16 collateral that is in the stores and in -- as
17 part of the company's assets is diminishing
18 daily. And, therefore, the consideration that
19 Gordon Brothers has proposed, that value of the
20 collateral that they are purchasing diminishes.

21 So there is the potential that
22 they would want to reconsider or renegotiate all
23 of the consideration that is part of this

24 agreement if this sale does not close in a
25 relatively short timeframe.

114

1 Q. Costs of the sales that they have
2 undertaken to pay also be reduced because the
3 debtors would have been paying it in that time
4 period?

5 A. The costs associated with things
6 such as rent and payroll are being paid in the
7 ordinary course.

8 So the outflow of cash would --
9 is being disbursed.

10 Q. Gordon Brothers right to
11 designate buyers, is there any limitations as to
12 who they can designated as a buyer of any
13 particular asset?

14 A. Not to my knowledge.

15 Q. Could they designate an insider
16 of the debtors as the purchaser of some of the
17 assets?

18 A. I don't know any restrictions on
19 their sedation rights.

20 MS. CASEY: That's all the
21 questions I have. Thank you.

22 MR. McCLAMMY: Okay.

23 MR. CONLAN: I don't know how --

24 MR. McCLAMMY: Mr. Conlan, maybe

25 before you start, let me just check to see how

115

1 our court reporter is holding up. And maybe

2 also I could ask -- I understand you may have

3 mentioned you only have a few questions.

4 Is there anyone else on that

5 anticipates having any questions for Mr. Percy?

6 MS. KATONA: Hi, this is Shanti

7 Katona of Polsinelli on behalf of Hogan. We may

8 have one clarifying question as well.

9 MR. McCLAMMY: Anyone else?

10 Okay. Madam Court Reporter,

11 would you be able to marshal through for a few

12 more questions?

13 THE REPORTER: Yes, I'm fine.

14 Thank you.

15 MR. McCLAMMY: All right. Great.

16 No. Thank you.

17 EXAMINATION

18 BY MR. CONLAN:

19 Q. All right. Good evening,

20 Mr. Percy. My name is Mark Conlan. I'm an
21 attorney with the Gibbons firm, and I represent
22 a foreign trade vendor, Round Tripping Limited.
23 I just want to ask you how the
24 503(b)(9) and post-petition claims were
25 calculated.

116

1 Are you familiar with the term
2 FCR?

3 A. I am not.

4 Q. How about are you familiar with a
5 term called forward -- forwarder's cargo
6 receipt?

7 A. I am not.

8 Q. So let me ask you this: Do you
9 know what dates they used when they
10 calculated -- and I assume it's your firm that
11 did it -- when they calculated the 503(b)(9)
12 exposure?

13 A. It was related to me that the
14 protocol in Delaware, which is different than
15 other jurisdiction, is based upon when inventory
16 is received, not when title is transferred.

17 So we did our calculation by

18 cross-referencing invoices and shipping
19 documentation of when goods were received,
20 either in the distribution center or where goods
21 were delivered directly to the stores and to the
22 stores.

23 And so we worked 20 days back
24 from the filing date for when goods were
25 received in either of those locations.

117

1 Q. And would that same methodology
2 apply to the post-petition claims?

3 In other words, did you use the
4 date that the goods were received at the
5 distribution center of the stores when
6 calculating what was a post-petition receipt?

7 A. To the best of my knowledge, yes.

8 MR. CONLAN: Thank you. That's
9 all I have.

10 I told you it was a couple
11 questions.

12 MR. McCLAMMY: You're a man of
13 your word.

14 EXAMINATION

15 BY MS. KATONA:

16 Q. Hi. Shanti Katona of Polsinelli
17 on behalf of Hogan Transports and Hogan
18 Logistics. I just have one clarifying question.
19 And please correct me if I am misstating
20 anything.

21 But was I correct that in
22 response to a question about how the debtors
23 planned to curtail expenses and preserve value
24 through the March period, that one of the
25 strategies to be employed was to get concessions

118

1 from freight carriers such that they would
2 deliver inventory for as little consideration as
3 possible?

4 A. No. That is not correct. We
5 will contract with freight carriers to the
6 extent that they are willing to send goods. As
7 you can imagine, we're not getting any real
8 concessions from those freight carriers. Many
9 of them need to be paid ahead of time. So we
10 are paying essentially standard rates for
11 freight to be delivered to the distribution
12 centers and to the stores.

13 MS. KATONA: Thank you. Thank

14 you for clarifying.

15 That's all I have.

16 MS. HUMISTON: Hi. This a
17 Shannon Humiston and I represent Mielli. I
18 didn't get off mute quick enough before, but I
19 have a few quick questions, if the court
20 reporter has two more minutes. If that would be
21 okay.

22 (Court reporter seeks
23 clarification.)

24 MS. HUMISTON: Shannon Humiston
25 of McCarter & English on behalf of Mielli,

119

1 M-I-E-L-L-I Realty.

2 EXAMINATION

3 BY MS. HUMISTON:

4 Q. Okay. Sir, under the proposed
5 sales agreement with Gordon Brothers, who would
6 make the year-end reconciliation payments?

7 A. The reconciliation payments for
8 rents, CAM, insurance, property taxes -- is that
9 what you're talking about?

10 Q. Yes.

11 A. So those -- I guess it kind of

12 depends. It depends on what timeframe they're
13 applicable to, and what exactly the expenses
14 are. Some of these are handled separately than
15 others.

16 So it kind of depends on the
17 nature of those expenses and when the expense is
18 incurred.

19 Q. So who will be paying real estate
20 taxes under the proposed development agreement
21 with Gordon Brothers?

22 A. The real estate taxes are, I
23 believe, in the wind-down budget.

24 So the estate is paying those.

25 MS. HUMISTON: Thank you. I have

120

1 no further questions.

2 MR. McCLAMMY: I've got nothing
3 on redirect for now.

4 And thank you very much to our
5 court reporter for doing this on short notice
6 this evening.

7 I know for our end, we would like
8 a copy of the rough as soon as it's available.
9 You have some sense of timing on that? We're

10 scheduled to go back to court tomorrow at

11 10:00 a.m.

12 (Discussion off the record.)

13 (10:08 p.m.)

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1 CERTIFICATE

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5 I, Karen Friedlander, a

6 Certified Court Reporter of the State of New

7 Jersey, do hereby certify that prior to the

8 commencement of the examination, the witness
9 and/or witnesses were sworn by me to testify to
10 the truth and nothing but the truth.

11 I do further certify that the
12 foregoing is a true and accurate computer-aided
13 transcript of the testimony as taken
14 stenographically by and before me at the time,
15 place and on the date hereinbefore set forth.

16 I do further certify that I am
17 neither of counsel nor attorney for any party in
18 this action that I am not interested in the
19 event nor outcome of this litigation.

20

21

S/Karen Friedlander
Certified Court Reporter
License No. XI01282

22

23

24

25 Dated: 12-31-24